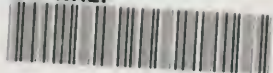


UC-NRLF



B 3 453 693

RECON



THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA

ON CIRCUIT IN KAFIRLAND



MESSRS. MACMILLAN & CO., LTD., will
be glad to receive a copy of the issue
containing a notice of this work.

The price of the book is

7/6

ON CIRCUIT IN KAFIRLAND

AND OTHER SKETCHES AND STUDIES

BY

PERCEVAL M. LAURENCE, LL.D.

JUDGE PRESIDENT OF THE HIGH COURT OF GRIQUALAND

London

MACMILLAN AND CO., LIMITED

CAPE TOWN: J. C. JUTA AND CO.

1903

All rights reserved

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

OODEN LIBRARY

PREFACE

THE principal excuse for the existence of this volume is that none of its contents except the first paper (which appeared in *Temple Bar*) have been previously published in England. Most of them originally appeared in the *South African Law Journal*. They are rather a mixed lot—representing some of the recreations, legal and literary, of a colonial judge. Besides the circuit reminiscences, the collection includes three biographical sketches and four papers dealing with various aspects and phases of the law of crime and criminal procedure. The address on Johnson with which the volume concludes has, I am sensible, its full share of the defects inseparable from such compositions. It contains no new matter and is meant only for those who fancy they have no leisure to *piocher* their Boswell but who enjoy an occasional hour in the atmosphere of the Literary Club. Well-informed people are respectfully warned off.

The notes contain one or two incidental references to my "Collectanea," a volume of essays and reviews which I published under that colourless title some four years ago. They were received with, I fear, more

courtesy than they deserved on the part of the press and with such complete indifference by the book-buying public—if such an entity still exists—that I understand some “remainders” are still procurable on very reasonable terms.

I have to thank the editors of the above-mentioned periodicals for their kind concurrence in the reproduction of the papers referred to. As regards “The Unfinished Will,” similar acknowledgments are due to the editor of the *Revue des Deux Mondes* and to the author of the original story, M. Masson-Forestier.

TABLE OF CONTENTS

	PAGE
ON CIRCUIT IN KAFIRLAND	1
HOW WE WENT CIRCUIT IN "A SORT OF A WAR"	29
A GREAT ADVENTURER	41
A GREAT IRISHMAN	71
"DAN'L;" A MAN OF PARTS	91
FROM THE HAGUE TO THE CAPE: THE PEACE CONFERENCE AND THE SOUTH AFRICAN WAR	167
THE STATE TRIALS	149
THE LAW OF CRIME	207
THE SCARLET ROBE	223
THE UNFINISHED WILL	247
AN EVENING WITH DR. JOHNSON	287

ON CIRCUIT IN KAFIRLAND

ON CIRCUIT IN KAFIRLAND

ON a former occasion¹ we related some of the experiences and adventures of bench and bar, when travelling on Circuit through the country districts of the Cape Colony, during the piping times of peace—in the pre-golden age, when the ore of the “banket” reef was *irrepertum et sic melius situm*, and Dr. Jameson was still practising, with distinguished success, the healing art at Kimberley.

Circuit work during the last two years, with the temple of Janus open—or at all events, as the Chancellor might put it, during “a sort of war,” with the gates ajar—has been another guess-thing. Travelling is unpleasant and chancy, “communications” are apt to be uncertain, and a wide margin has to be allowed for what may euphemistically be described as “contingencies.” Even in places which the lawyers can reach by rail, jurymen and witnesses often have many hours—distances at the Cape are generally

¹ See “On Circuit at the Cape :” *Macmillan's Magazine*, April, 1898 ; “Collectanea,” 290-304.

reckoned not by miles but by hours—of road-faring from their distant homesteads to the circuit town. All the horses have been “commandeered;” so they have to come in by bullock-waggon, and some of the bullocks have been taught to trot. The sheriff’s officer, never too popular, finds serving his blue papers a distinctly risky business; and a painfully large proportion of qualified jurors are probably themselves languishing in the local gaol, awaiting further acquaintance with the amenities of martial law.

At the beginning of the war a Court was being held in a little town some distance from the railway line. After the business was over the Judge and Bar, who had come from Kimberley, returned to the nearest station, only to find that “communications were interrupted.” No trains were running in that direction, and the wires were cut. The siege of Kimberley had begun; and several months elapsed before the legal refugees were able to re-integrate their domicile and ascertain to what extent their hearths and homes had suffered from the attentions of the Boers’ big gun.

Since then the circuit work has been carried on as regularly as possible, but on a scale which may be described, like the style of certain joint-stock companies, as “limited and reduced.” On one occasion the Judge, travelling on the single line of rails, was detained many hours at a crossing-station, the “opposing train” having been derailed by a mine, supposed by some to have been prepared as a practical

repartee—a sort of *argumentum ad iudicem*—for the Judge himself, who had been trying political offenders ; while, on another, the members of the same Court had a nasty collision with an armoured train, which had been sent ahead for their special protection. One can scarcely leave one's coach at a wayside station without being challenged by a truculent sentry ; while the attempt to get a little rest at night is frequently interrupted by a peremptory demand for the exhibition of one's pass. When we take to the road, and get beyond the purview of the block-houses which guard the line, there is always the chance of being held up by some “marauding band” of “roving ruffians,” who might regard the circuit transport and supplies as a useful supplement to their slender commissariat. The advocates sometimes find there are no horses to be hired, and think themselves fortunate if they can charter an ox-waggon ; and altogether, while the work somehow gets done, and amid the clash of arms the law is not completely silent, the conditions under which it is performed are rather exciting than agreeable, especially to elderly gentlemen of peaceful habits, whose only weapon of offence is a punishment warrant.

On the whole the least disturbed region of the Cape Colony of late has been that where in former years there was most unrest. In early days the settler in British Kaffraria was constantly kept on the alert by the apprehension, too often well-grounded, of a Kafir raid from the eastern border. All the country beyond

the Kci, the Transkei proper, Tembuland, Fingoland, Pondoland, and Griqualand East, has now been annexed to the Cape, up to the border of Natal; and this region, which has a Kafir population of about three-quarters of a million, with perhaps fifteen thousand Europeans—mostly consisting of officials, police, traders, and a few scattered farmers, with their respective families—as a whole has not afforded a satisfactory field for the operations of the Boers. With the exception of one or two districts on the northern border it is not a promising recruiting ground, and a commando entangled between its streams and mountains might find itself in a rather awkward position. Circuit Courts have for some years been held in Kafirland; and the journey, though sometimes fatiguing, is a very interesting experience.

The scenery is probably the most picturesque and romantic in South Africa. The landscape up country on a chill October day, after the spring rains have begun to fall, sometimes reminds one of the Yorkshire moorland: skirting the well-wooded banks of the Umzimvubu—"the home of the hippopotamus"—as it approaches its mouth at the gates of St. John's, one thinks of the Tay at Dunkeld, while the forest scenery in parts is not unlike that of the Schwarzwald. We ride through wood and vale, by rushing brooks and many a clamorous waterfall; over rolling downs and breezy uplands, with native kraals, like gigantic beehives, dotted in clumps on hill and plain. The green

slopes in every fold are scored with black patches by the Kafir plough (invariably made in the United States); the season is good, and there is a prospect of fine crops of maize and millet, of which an undue proportion will be employed for the manufacture of Kafir beer. We meet troops of browsing sheep and goats, and every now and then a waggon or two, with their long spans of patient oxen, loaded with produce for the coast or merchandise for the interior. The cattle are grazing on a thousand hills; vaguely looming on the horizon we catch a glimpse of some snow-capped peak of the distant Drakensberg.

The manners and customs of the inhabitants, their legends and superstitions, their ways of life and modes of thought, afford a subject of study and field for observation of almost inexhaustible interest. The English reader, who cares for such matters, may be recommended to peruse the popular writings of Mr. Scully, for many years a Magistrate in Kafirland—such as “Kafir Stories” and “The White Hecatomb”—which contain some graphic sketches and embody many curious traditions and reminiscences, narrated with marked literary ability.

The itinerary involves long journeys by road, often mere tracks over undulating plains, sometimes winding through forests or cut and blasted out of the mountain-side, the total distance thus traversed, usually from Indwe on the Cape railway to Richmond on the Natal line, being nearly five hundred miles. This includes a

journey down through western Pondoland, from Umtata to the Gates of St. John's, and thence up through eastern Pondoland to Kokstad. Pondoland, annexed only a few years ago, is the most barbarous portion of the Transkeian territories; but even there of the methods of barbarism we saw but little. "I thought," with Orlando, "that all things had been savage here;" but there was really no occasion to put on the countenance of stern commandment. The barbarous people, in fact, showed us no little kindness, mixed with a good deal of curiosity, and plenty of politeness, not untinged by anticipations of possible doles or profitable barter. Fortunately for law and order there are no licensed houses in Pondoland; but one meets with a courteous reception, and obtains all that is essential in the way of accommodation at the wayside dwellings, each ensconced in a leafy bower of gums and wattles, of European traders.

Of course the quality of the entertainment varies. At one stage the simplicity is Spartan; the judge and his registrar are lodged in a Pondo hut, while the servants secure berths on the counter of the adjacent store. At the next, we find every refinement—a piano, a bath, and the latest production of Miss Marie Corelli. The ladies of the household enjoy their croquet, and are becoming skilled at ping-pong; while an excellent dinner, with the *pièce de résistance* presented by a neighbouring chief, is cooked by a Pondo *chef* and served by a butler of the same tribe.

Umtata, a little town on the border of Pondoland, is the "cathedral city" of the diocese of St. John's. It is also the capital of Tembuland, and the residence of the Chief Magistrate, Sir Henry Elliot, an old army man of long experience in the country, who has filled a responsible position during many critical periods, and justly acquired the full confidence both of the Government and the various chiefs and headmen. The other Chief Magistracy is at Kokstad, the capital of East Griqualand, so named after Adam Kok, the old Griqua chief, whose sepulchre, though not a work of artistic merit, is the most conspicuous historical monument the town can boast. The Grikwas, who migrated with him from Griqualand West, are among the most loyal sections of the coloured population; and we saw but little of them at the circuit court, as they were mostly engaged, in various capacities, "at the front." As the condition of things becomes more settled, it seems probable that the *régime* in Kafirland will gradually become assimilated to that in the old Colony. The Transkeian territories already return representatives to Parliament, and their representation has recently been increased; centralisation will be facilitated by the advent of the railway; and, when the present chief magistrates seek a well-earned repose, it seems doubtful whether they will be replaced.

At present civil litigation, involving native customs, comes seldom, and only incidentally, before the circuit courts. Such matters are decided by the magistrates—

usually gentlemen of long experience in Kafirland and more or less conversant with the language—subject to an appeal either to the Supreme Court or to the Court of the Chief Magistrate, sitting with assessors. Should the parties belong to different tribes, whose customs vary, the defendant is entitled to rely on the custom of his own tribe. Unfortunately, with the exception of the official records, no reports are available of the “leading cases” which have established precedents and settled doubtful points. So far as one can gather, a great revolution is being quietly accomplished, in native law and usages, by the substitution of individual for tribal tenure of the land. A good deal that is picturesque and historically interesting will disappear, and much that is salutary and stimulative to industry and progress will emerge in its stead. The change, which has not yet been initiated in Pondoland, has on the whole been well received by both Tembus and Fingos; and, though it will vastly diminish the power of the chiefs, the pressure of opinion in its favour among the bulk of their people has been too strong for them to raise much objection to its accomplishment. Over a large portion of the country the titles were understood to be practically ready; but the Surveyor-General had decided to defer their actual issue till the King’s pleasure became known as to the precise form of the new style which, under the Act passed in 1901, he has subsequently assumed.

Another difficult question, which may cause some

trouble in the future, is that of the law of marriage and succession. The Kafir is habitually polygamous, and for polygamy, in the present condition of the social fabric, there is a good deal to be said. As an institution, it forms the keystone of a large body of native law, and for many purposes it is recognised by the colonial government. The law of dowry and inheritance is elaborate and well understood; the "great wife," the "right-hand wife" and the minor wives, and the issue of each marriage, all have their defined status and privileges. But, should a native marry according to the general statutory law, before a marriage officer—and many ministers of religion, exercising that function, are for obvious reasons anxious to solemnise such unions, and not always as particular as they might be as to proof of the necessary preliminary steps—the Roman-Dutch law is held to apply. Though a man may have several previous "reputed" wives, the children of the statutory marriage are regarded as his only legitimate heirs. A suggestion has been made, but not adopted, that this result should only arise when there has been, at the time of the marriage, an express disclaimer of the native law. Possibly a compromise might be arrived at, on the basis of permitting the husband, in such circumstances, to exercise the option of placing the issue of his reputed wives, and any issue of his future wife, on the same footing of legitimacy. The matter is one which will require judicious treatment by the Cape Legislature—whenever that body may be in a position to resume its legislative labours!

The Circuit Court is mainly occupied with criminal trials, of which a painfully large proportion are cases of homicide. These often arise out of the trespass of one man's stock on the cultivated land of his neighbour. Such incidents arouse a great agitation; warning is followed by impounding; an arbitrator is sometimes called in, but too often there ensues a fight to a finish. More frequently the quarrel has occurred at a "beer-drinking," for which, especially in a good season, there are far too many pretexts. It could well be wished that courtesy would devise some other form of entertainment. The Kafir corn is brewed; a goodly array of pots has been prepared; and the kraal is well furnished with guests. Occasionally they belong to different tribes, which much increases the probabilities of friction. As the party becomes convivial, it may happen that Tjala loses his tobacco-bag or Nkolo misses his bungusa—a peculiarly deadly form of knobkerrie. Invidious suggestions on the subject are made; a single combat begins and partisans soon join in. Other bungusas do their work; there are often assegais in the roof or corner of the hut; if not, stones come in handy; and presently a jury has to decide, after an infinity of hard swearing, whether the sequel amounts to murder, culpable homicide or mere "affray." The Transkeian territories, it may here be mentioned, are the only portions of South Africa which have their own penal code, enacted by the Cape Parliament in 1886, based partly on the Indian Code and adapted to local circumstances,

as the result of an elaborate inquiry, embodied in the report of the Native Laws Commission of 1879.

In these cases, as a rule, the only witnesses are the native participants and those about them—whose evidence is often rather difficult to follow, owing to the obstacles to articulation when the mouth, however capacious, is stuffed with charms to prevent the advocates from tripping one up—and the European doctor who held the *post mortem*. In one case of assault, the Crown called first the complainant, *then the doctor*, then the complainant's son, who was present when the injuries were sustained. "Your name," counsel said to the latter, "is Mjala, and I believe you are a son of the last witness?" "Really, Mr. C.!" came from the bench; and it was some time before Mr. C. grasped the serious nature of the reflection which he had been making on the character of the district surgeon. "In the west of Ireland," said the late Lord Morris, "the Court is usually packed with M's. There is Michael Morris on the Bench, two Moriartys in the dock and a panel, mainly consisting of Murphys, in the jury-box." In Kafirland, the baptismal rule of "M or N" is fairly well observed, most of the male names beginning with the former and the female with the latter consonant.

Sometimes, besides the European doctor as a witness, we have one of his native colleagues as a prisoner. The witch-doctor fortunately no longer exercises the same sinister ascendancy as formerly; but there seems

reason to fear that there is still a good deal of “smelling-out” on the sly; and some of the apparently motiveless homicides, at beer-drinks or elsewhere, are probably “suggestionised” in the bad old fashion. The ordinary Kafir doctor, however, has his merits. Like Sir William Butler, he has little taste for surgical operations and seldom ventures beyond a slight scarification. The natives strongly object to the use of the knife; and in many cases where, with a European patient, amputation would afford the only chance, there are wonderful records, attested by experienced observers like Sir Henry Elliot, of recoveries attributable solely to the *vis medicatrix naturæ*. Sometimes, indeed, when a skull has succumbed to the application of a bungusa, the native practitioner resorts to trepanning, but in the antiseptic treatment of injuries he is always sadly to seek. As a rule, however, he confines his art to the exhibition of certain decoctions of herbs and roots and is often called in to prescribe for rather curious complaints. A family, it seems, has suffered from “a rash sent by the river god,” and the head of the household demands as a corrective the native equivalent for Epsom salts; or perhaps a girl has taken to dreaming of the *impandulu* or “lightning bird”—lightning is supposed to be caused by a great bird, the beating of whose wings produces the thunder—and everybody knows that such cases are serious and require drastic treatment. Speaking generally, there is probably at the present day about as much belief in *umtagati*, or magic of sorts, in

Kafirland, as there was at Versailles, say two centuries ago, in the glorious reign of Le Roi Soleil.¹ On the whole, we may conclude that the services of the native doctor are often really useful in a country with a vast population, where, even apart from prejudice, considerations of distance and expense alike often preclude a visit to the dispensary of the European practitioner at the central town. Of course the coloured gentleman is not infallible; every now and then he gives an overdose of one of his favourite remedies, such as resin of euphorbia or colchicine, culled perhaps when the root was exceptionally juicy; and a prosecution for culpable homicide is the inevitable result.

The natives occasionally play other parts in the circuit court than those of prisoner or witness. Sometimes the advocate for the defence is instructed by a native agent, whose office displays a prominent sign-board, describing him, in the vernacular, as "the speaker of cases and maker of writings,"—the nearest attainable paraphrase of the qualifications of an "attorney and notary public." Every now and then a gentleman of colour is summoned to serve on the jury. This happened recently to Veltman, the chief of the Fingoes, a man of intelligence and character, whose visit to church, accompanied by Dalindigebu, chief of the Tembus, whither they proceeded in a waggonette, escorted by a numerous suite, who all conducted

¹ See, *e.g.*, "Princes and Poisoners: Studies of the Court of Louis XIV.," by F. Funck-Brentano, trans. G. Maidment. London: 1901.

themselves in the most exemplary manner, supplied at the same period the subject for a paragraph in the "personal" column in the local newspaper. Veltman had been much interested in his experiences at Cape Town, where he had been, among other notabilities, to welcome the Duke and Duchess of Cornwall. He was careful to take with him his "court dress," in the shape of the uniform of a British admiral; but on arrival it was discovered that it had lost something of its pristine freshness. By direction of Sir Gordon Sprigg, who, as Prime Minister, also administers the department of Native Affairs, he was supplied with a new rig-out, suitable to the occasion. Sir Gordon some time ago stood for Tembuland, but was defeated, after rather a sharp contest, by Sir Richard Solomon. Had Veltman been one of his constituents, this "delicate attention" might have furnished a repartee to a political opponent, who got into an awkward predicament a year or two before, through a gift of blankets to a few of his native friends and supporters, which unfortunately coincided with the "electoral period."

A story is told of Veltman, which suggests that he is not devoid of that sense of humour which the European observer rarely detects among the native races of South Africa. On one occasion the advocates—there were four of them—were hard up for transport, and were glad to charter one of his waggons, with a span of six mules, for their conveyance to the next circuit town. The charge, it was intimated, would be

£4 per mule, which they suggested was a trifle stiff. Veltman took time to consider the representation, and ultimately sent a message that his price would be, not £4 per mule, but £4 per advocate. The circuit bar were grateful for the reduction, but somehow did not feel exactly complimented by the basis on which the tariff was calculated by the Fingo chief. At another place, a native prisoner, being asked, on conviction, whether he was in a position to pay a fine, explained that he had possessed a red ox with crumpled horns, but the ox had gone to his attorney. "And had you no other stock?" "Yes," was his reply, "I had also a black mare; but the attorney told me, when the circuit court came round, that he must have that too, in order to pay the advocate"—a statement which perhaps may furnish an argument for the fusion of the two branches of the profession.

Let us conclude this paper, in somewhat graver vein—for, after all, there is more tragedy than comedy about circuit work in Kafirland—by an epitome of one remarkable case, which, if tried in a more civilised community, would doubtless have proved something of a *cause célèbre*, including as it did all the dramatic elements of love, jealousy and crime.

Towards dusk on a winter evening (Wednesday, July 3, 1901) a stranger arrived at a Kafir kraal, some fifteen miles from the village of Engcobo, and asked for the headman. The stranger, a native, was dressed

in a jacket which, in the waning light, appeared to be of the colour and material of khaki, with light tweed or corduroy trousers and black stockings worn over them. He had a soft felt hat, with a red handkerchief round it. Altogether, his get-up seems to have been suggestive of some sort of uniform. The headman, a grey-beard, named Rasmeni, was well stricken in years ; his sight was dim ; he described his sons, whose names were James and Aaron, as his " eyes ; " his intelligence was perhaps rather below the average for a man in his position ; but he tried to do his duty conscientiously according to his lights, and entertained a proper respect for the powers that be. The stranger announced that he was a policeman from Engeobo, and had come with orders to arrest a certain Veliti, who had recently arrived at the kraal. Rasmeni asked how it was that, if he was a policeman from Engeobo, he did not know him. The policeman replied that he had come there lately, with the new Magistrate, from another part of the country. Rasmeni knew that there was a new Magistrate, and therefore accepted the statement. There was some doubt as to whether the policeman was asked for his warrant ; Rasmeni stated that the question was put to him, the reply being that he had been despatched in a hurry, after office hours, without being supplied with any document. Veliti, he explained, was charged with stock theft. Now, when the spoor of stolen animals has been traced to any kraal in Kafirland, the headman is held to be responsible for their

value and the expenses of the search, and it behoves him to be on the alert to bring the culprit to justice. Some one asked the policeman whether he had brought any handcuffs; he replied in the negative and applied for the loan of a reim to tie the prisoner's hands together. A reim was accordingly lent by Rasmeni, who then sent his sons, James and Aaron, in company with the policeman, to arrest his prisoner.

Veliti was found in his hut, warming himself by the fire. The policeman remained at the door and only came in for a moment when Veliti, who repudiated the charge but submitted quietly to being arrested and bound, was about to be removed. Veliti had not long been married. His wife was in the hut, with other women, but had little or no opportunity of seeing the policeman. The fire gave only a dim light; the man kept in the background and did not speak while in the hut. Veliti was taken to Rasmeni's place, and the policeman then pointed out to James and Aaron that, if the man was not bound securely and got away, they would be responsible for his escape. They told him to satisfy himself, and he accordingly proceeded to bind Veliti's wrists closely together, tightening the reim by the light of the fire. At this time his features were clearly seen by both James and Aaron, and also by Sesani, a nephew of the headman. The latter tried hard to persuade the policeman to stay for the night, pointing out that the hour was late and the weather cold. "No," said the policeman, "my time is up, and

my orders are to lodge my man to-night in Engcobo gaol." As he refused to stop, Rasmeni sent Sesani to accompany him and give him any help he might need on the road. Not very long afterwards Sesani came back, the policeman having dispensed with his services, and bringing a message from Veliti to his uncle, one Mbulawa, requesting him to bring in his pass the following morning.

When the morning came, Rasmeni felt uneasy about the events of the previous evening. After thinking the matter over, he decided to saddle his horse and rode into Engcobo. On arrival, he spoke to the police there and learnt from them that no one had been sent to arrest any of the people at his kraal. Proceeding to the gaol, he was there informed that no prisoner had been brought in from his ward. There seemed to be all the elements of *une ténébreuse affaire*. He returned to the Magistrate's office and, while he was there, a report came in that a dead body had been found at All Saints, a place about half-way between Engcobo and his kraal. He rode out to the spot and found that the body was that of Veliti. "Veliti," as Mbulawa put it, "had been slaughtered." "The body," said Rasmeni, "was covered with blood and wounds all over;" and the reim he had lent the policeman was still round the dead man's right wrist. Mbulawa, it appeared, coming in with the pass, as requested by Veliti, had found the body, covered by a blanket, by the side of a footpath. This was a short cut to the town; Rasmeni had ridden

along the main road. The doctor described the wounds, which were of a terrible character. There were thirteen in all, on the head, face, throat, neck, hands, arms and body. The windpipe was completely severed, and there was at least one other mortal wound. All were of the nature of gashes and had been inflicted with some sharp instrument, such as a knife.

It seemed clear that Veliti had been arrested by a sham policeman; it was perfectly clear that he had been foully murdered. Suspicion of course pointed to the man in whose custody he had last been seen. Who was this man? A native policeman at Engcobo, named Masiti, ascertained "that Veliti was the husband of a woman whom a young man had tried to elope with." Masiti knew something about the case, and that the young man had recently served three months for assaulting the woman and attempting to abduct her. The description of the policeman appeared to correspond with that of the young man, who had been seen in the neighbourhood. Masiti had a clue. He worked up the case and, three days afterwards, arrested the man, whose name was Vetbooi, in a neighbouring kraal, at the hut of one Manteku. He observed that he had the mark of a wound on his thumb, both on the inside and on the outside. Vetbooi was taken to Engcobo, where the injury was examined by the doctor, who pronounced that it had the appearance of a bite.

The story of Manteku, with whom Vetbooi had been

staying, was of great importance. It appeared that, at about mid-day on the 3rd of July, Vetbooi had left the kraal, saying he was going to look for some horses. He returned at daybreak on the following morning. He was then wearing a drab jacket, light trousers with dark stockings and a felt hat with a red handkerchief. On his return, during the temporary absence of Manteku, he undressed and tied up his clothes in a bundle. He did not appear to have worn them on the following days. He was what is known as a "blanket" Kafir, and such persons wear European clothes, if they possess any, only on special occasions. Vetbooi, as soon as he returned, tied a rag round his thumb, which he said he had hurt. He explained the wound, first by saying he had received it while helping a friend to cut wood in the forest and afterwards by stating that he had been at a "beer-drink" and taken part in one of the fights incidental to that form of entertainment. Nothing further happened till he was arrested by Masiti. Some one then suggested to Manteku an examination of the bundle of clothes. The bundle was opened and found to be saturated with blood. His knife was found in one of his boots; it also had blood on it. The blood on the clothes was examined by two doctors under a microscope and pronounced to be that of a mammal. Vetbooi explained to Masiti that it was the blood of a goat he had slaughtered, in a certain case in which he had played the part of a "Kafir detective," and had given information to the owner.

Masiti knew about that affair, which had led to the conviction of two other men. One of these men was called and deposed that, when Vetbooi killed the goat, he was not wearing any clothes but only his blanket. As Masiti was on his way to Engcobo with his prisoner, they met James and Aaron, who at once identified the latter as the policeman who had arrested Veliti.

The question of identification was, of course, the really vital one. Vetbooi was identified, firstly by his voice, secondly by his clothes, and thirdly by his features. The old man, Rasmeni, could only speak to his voice. But, as he admitted that there was nothing peculiar about it, and seemed to have had little opportunity of hearing it in court before he gave his evidence, his assertion did not count for much. As to the clothes, all the witnesses from the kraal agreed that, in the dim light, the jacket appeared to be of a lighter colour than the blood-stained garment handed to Masiti by Manteku. The other clothes were, at all events, precisely similar to those worn by the sham policeman. They could not go further than that. But James, Aaron, and Sesani all swore to his appearance as well. It was when he was binding the rein by the light of the fire round Veliti's wrists that they saw him clearly. As James said, "I then particularly noticed him by the light of the fire. I am sure the prisoner is the man. I identify him more by his appearance, as he was tightening the man's wrists by the light of the fire,

than by the clothes he wore." Aaron deposed: "I saw prisoner clearly in my father's house when he went to tie Veliti's wrists together. I was close up to him." And Sesani stated: "I heard him speak to James about the reim and warn him he would be to blame if he didn't tighten it and the prisoner escaped. James told him to satisfy himself. Prisoner then tightened it himself, and I noticed him particularly at this time." It was one of the most impressive incidents in the whole of this strange case. The pseudo-policeman, tightening the reim round the wrists of his unsuspecting victim, was at the same time unconsciously tightening the noose round his own neck.

Assuming the identity to have been sufficiently proved when taken in connection with the evidence as to the prisoner's movements on the fatal night, and the state of his clothes when he was apprehended, the case for the Crown seemed one of almost overwhelming strength. But what could have been the motive for this extraordinary crime? Here the evidence of Masiti again supplied the clue, and corroboration was not wanting. There came forward Nonayiti, the widow of Veliti, and her statement, omitting "hearsay" and certain expressions of opinion, which were excluded at the trial, was in the following terms:—

"I am wife of the deceased Veliti. Before I was married the accused was my lover. After I got married he came to me one day when I was in the forest collecting wood. He said I must go with him, but I refused. He

then beat me and I went with him. After we had gone some distance, I refused to go any further and he struck me on the head. I came here to the office to complain, and the accused was arrested and sentenced to be imprisoned for three months. I went back to my husband. After the three months, I saw the accused passing my husband's kraal, and some of the women called out to him and asked for tobacco. He said they must come and fetch it; they sent me to fetch it, and the accused put a sixpence into my hand with the tobacco. . . . A week after that some men came into the hut where I was with my husband and mother-in-law and said they had come to arrest my husband. . . . I did not see the policeman, for he kept in the dark."

After the case for the prosecution had been closed in the magistrate's court, the accused called as a witness a fellow prisoner in the gaol, apparently with reference to the slaughter of the goat, in which he also had been implicated. The witness, however, while not helping him in this respect, proceeded to narrate the following story:—

"While he was at the kraal, I had a conversation with the accused, and he told me that once he was in Engcobo gaol. I asked him what he had done. He said he tried to elope with a man's wife, and that he was that woman's lover before she was married. He also told me that he liked the woman very much and would never give her up, and would do something to get rid of her husband. I said 'How will you manage that?' He said he would give himself out as a policeman and go and arrest the woman's husband and then kill him."

This evidence was repeated at the trial. It was

elicited by the court that, owing to the trouble about the goat, the witness naturally had some feeling against the prisoner; but the story was scarcely one which he could have invented, and, unless it was true, the only explanation that could be suggested was that somehow he might have heard of the substance of the deposition of the widow. On the whole, the jury were cautioned against attaching undue importance to this statement.

The prisoner was defended by counsel, who called no witnesses, and confined himself to criticising details in the evidence for the Crown, especially with regard to the identification, and warning the jury as to the risk of convicting on "circumstantial" evidence. But there was no suggestion as to anyone else who could have had any motive for impersonating a policeman in the manner described, and no explanation was afforded of Vetbooi's movements or whereabouts on the night of the murder. The trial had occupied some hours; but the jury convicted, after a very brief consultation, without leaving the box. Had the prisoner tendered his own evidence he would have been obliged to admit the conviction for assaulting the wife of the deceased. He would probably also have been cross-examined as to certain admissions which he was alleged to have made while awaiting trial, in circumstances which precluded the Crown from tendering evidence on the subject.

The case was tried in a little circuit town in Kafirland, where there were no newspapers or reporters. Some of the jurors were Dutch farmers, who had come

in for the purpose from the neighbouring district, then seething with rebellion, and so infested with "marauding bands" that the judge had found it advisable, on the recommendation of the military authorities, to drive into the town by a long detour, increasing the journey by some hours and approaching it by a literally "circuitous" route. Others were local tradesmen and storekeepers, mostly members of the town-guard, ready at a moment's notice should the bugle sound the alarm to repel an attack from their country neighbours. For the nonce they met in the jury-box, all equally prepared to perform their duty as public-spirited citizens, "not sinking the fees," and concluding their labours by the investigation of a *crime passionnel* which might well have had its venue on the banks not of the Tsomo but of the Seine.

The Circuit in Kafirland is drawing to a close. In the course of our travels from Kimberley, the capital of Griqualand West, to Kokstad, the capital of Griqualand East, we have witnessed many an interesting scene; we have visited the abodes of many so-called barbarous peoples and tried to learn something of their modes of thought and ways of life. The last verdict has been recorded; and the proceedings terminate with the usual polite dismissal of the jury, coupled with a suggestion from the Court that the real moral to be derived from our experiences in Kafirland is that South Africa is a country where

white men are few and black are many, and that its future progress and prosperity must in no small measure depend on the former agreeing to dwell together in unity, as in the pre-golden days, when the ore of the "banket reef" was *irrcpertum et sic melius situm*, and Dr. Jameson was still practising, with distinguished success, the healing art at Kimberley.

HOW WE WENT CIRCUIT IN "A
SORT OF A WAR"

HOW WE WENT CIRCUIT IN "A SORT OF A WAR"

It was only "a sort of a war;" the Chancellor himself had said it—and it was doubtless greatly to his credit. It is true that this was in the course of an after-dinner speech and therefore not quite as binding as an utterance from the woolsack or in the Judicial Committee; it is true also that, to adopt a distinction once drawn by a greater than Lord Halsbury, if it was only "a sort of a war"—just enough of a war, perhaps, to warrant the decision of the Privy Council in the case of Mr. Marais—there was no doubt of the existence of "military operations" on an extensive scale; and though the enemy was frequently reported to be "hemmed in" between block-houses or "surrounded" by cordons of mounted troops, he had still an awkward knack of turning up at places where his presence was both unexpected and inconvenient. Still the Chancellor's observation might be regarded, at all events, as a post-prandial *obiter dictum*, and as such could not fail to be encouraging to any minor luminary of the law,

when requested to endeavour to hold a Circuit Court, towards the end of 1901, in a somewhat disturbed portion of the western province of the Cape Colony.

We had already been engaged on a similar mission for several weeks, travelling by road and rail, dodging "marauding bands" of "roving ruffians" (here we are indebted for our vocabulary to the President of the Council and the High Commissioner) and struggling, between whiles, to administer justice as truly and indifferently as circumstances might permit. At length we found ourselves, comparatively speaking, in a haven of rest at Uitenhage, one of the oldest towns in the Eastern Province, shaded by its avenues of spreading oaks and cooled by rivulets of running water. Here the "visible scene" was peaceful enough; but it was just as well to keep within doors after dusk, as the Uitenhage Town Guard were evidently very much on the alert, and, in the case of any belated wayfarer, who happened to have mislaid his pass, or forgotten the countersign, apparently had received instructions "not to hesitate to shoot."

The question now arose as to how the next stage of our journey was to be managed. The object was to hold a Court at Oudtshoorn, the centre of a rich, well-watered district, regarded as the most fertile in the Colony, where agricultural land sometimes fetches prices which would be considered fabulous in England. At Oudtshoorn there was a good deal of work to be done, and, owing to the "unsettled state of affairs," it

had been found advisable to postpone the usual session. The town lies remote from any railway; the military authorities had discouraged the law department from sending the usual transport; and it was therefore decided to attempt to reach the place from the little port of Mossel Bay, improvising the best arrangements for the journey that in the then existing conditions seemed available.

That those conditions were not altogether free from complications, of more kinds than one, may be gathered from the following extract from a local newspaper:—

"Never before, and probably never again, will there be so many wagons in George at one time as the number we have had stationed on the veld for the past few weeks. Upon one day there were over 300 wagons on the hill, overlooking the town. If we take an average of 14 oxen to each wagon, we have over 4,000 oxen in George at one time engaged in transport. Many of the wagons were loaded with merchandise, but the majority had been engaged for the military, and were bound for Oudtshoorn, where, we learn, there has been a scarcity of provisions. They have been sent to Oudtshoorn from here, 50 and 70 at a time, and escorted by Town Guardsmen and members of the D.M.T. Although there have been considerable delays in the departure of the convoys from George, everything possible has been done by our Commandant to get the wagons off to their destination with as much alacrity as possible, consistent with safety. There have been times when, owing to the Boers being in the vicinity, the wagons had to be held back, and, with such a mobile and capricious enemy over the mountains, it was certainly a delicate question to decide as to when the wagons were most likely

to get through. The convoy which left George at the latter part of last week reached Oudtshoorn on Sunday. The provisions for the civilian storekeepers were very welcome. On this matter the *Courant* of Monday states:— ‘This morning we were able to get a bit of decent bread again from the bakers. For the past week or so people have been eating what looked like a mixture of bran and soot. Groceries, too, had just about run out.’ ”

A story is told of the children of the House of France, shortly before the Revolution. On being informed that the reason of the popular clamour, in front of the palace, was that the people had no bread, “then why,” one of them ingenuously inquired, “don’t they eat cake?” There seemed to be something in the alternative; and, as the prospect of asking for bread and being supplied with a concoction of bran and soot sounded rather unattractive, we decided to take with us, on our journey from Port Elizabeth, a few little trifles, such as cake and biscuits, *pâté foie*, and chocolate, which, without adding appreciably to the burden of our transport, might form a useful supplement to the slender resources of the local baker and grocer.

From Mossel Bay we proceeded, accompanied by an escort of mounted cyclists, to the old town of George, also famous, like Uitenhage, for its venerable oaks, but of which, for the nonce, the most conspicuous feature seemed to be a sandbag fort, which boasted a gun of modest calibre but praiseworthy intentions. There had been fighting in the immediate neighbourhood a few days before; another party of Boers had just

been reported in a certain kloof at no great distance; and it was not without some little hesitation, and a slightly increased escort, that the local Commandant approved of our starting on the next stage of our journey, which took us, on a perfect spring morning, through the superb scenery of the magnificent Montagu Pass. On the further side of the Pass, after our early morning start from George, we enjoyed *al fresco* an excellent late breakfast, halting at Doorn River, a wayside store and post-office. Here the Boers had, a few weeks before, been engaged in looting, but were disagreeably interrupted by two converging British columns. At that time there was stationed there a lady telegraphist; but as the worry entailed, from time to time, by the necessity of burying her instruments and taking other precautions, had begun to get on her nerves, it had been arranged to send a military operator to take her place. After breakfast we photographed the escort, who were shortly afterwards relieved by a larger force, coming to meet us from Oudtshoorn, where we arrived in due course the same afternoon.

Oudtshoorn is, as we have already remarked, the centre of a highly prosperous district, where the farmers grow fine crops of corn and tobacco, plant orange and walnut groves, orchards and vineyards, and breed big flocks of ostriches. The tobacco industry flourishes, and, in the valleys near the town, rich in limestone, with exceptional facilities for irrigation, several million pounds—worth to the grower about fivepence a pound

—are annually produced, as much as 2,000 lbs. weight having been grown from a single acre. The combination of a good season with the scarcity of genuine Transvaal tobacco, which is much preferred by the colonial connoisseur, had afforded a considerable stimulus to the local industry. When the crop is gathered, it is taken to a drying shed, a sort of “harte-beest house,” like the thatched roof of a building with no building beneath it, where it is left for about a month to dry.

The farmers are also doing well with their ostriches, though, as the number of birds increases, the price of the feathers is apt to dwindle. Ostriches thrive best on lucerne, and lucerne is rather a thirsty crop; tobacco, corn, and fruit all require plenty of water; and thus it happens that no small share of the wealth bestowed by nature finds its way into the pockets of the lawyers owing to disputes about irrigation and water rights. Water at Oudtshoorn is by no means *vilissima rerum*; Pindar’s epithet is much more appropriate. Each riparian proprietor claims his “reasonable” share; and, as he increases his cultivated lands, his dams and furrows and leadings are apt to multiply. The lower proprietors naturally complain; and some ancient tale of wrong, with plenty of evidence on both sides from the oldest inhabitants, has to be threshed out at the next sitting of the Circuit Court.

The ostrich is not only a valuable commodity, the source of the lucrative industry of feather-buying

(almost entirely in the hands of the Jews) and the indirect cause of much legal emolument, but their "camps" form a remarkably picturesque feature of the local landscape. When we were there, some of the birds were sitting, while others had already hatched their broods. The sitting process, as is well known, is carried on by the cock and hen in turn. The latter, the dun colour of whose plumage matches that of the soil, performs her duty, as unobtrusively as the situation permits, in the day-time, while the black cock-bird comes on at dusk, when his wife goes off to get her supper. If the lady fails to relieve him punctually at dawn, he doubtless makes unpleasant remarks, just like any respectable citizen whose tea and toast, and eggs and bacon, are not ready at the proper time to enable him to catch his early train for the city. An ostrich usually lays about fifteen eggs, but rejects, on principles of her own, a certain proportion, and seems to know instinctively which specimens are and which are not worth the trouble of incubation.

At Oudtshoorn a military Court, for the trial of political offenders, happened to be sitting at the same time as the Circuit Court. The persons brought before it, on various charges, included a member of Parliament and many other respectable and well-connected inhabitants of the district; and we had sometimes to witness the painful spectacle of such prisoners being marched through the streets to their place of trial. The proceedings in this Court—where there were no acquittals

—were, as might be expected, of a somewhat summary character. All legal arguments were severely discouraged and the advocate for the defence was sometimes reminded that “that kind of thing might be all very well, you know, in the Circuit Court,” which the gallant President seemed half inclined to describe as “the Court below.” The two tribunals, however, did not clash, their sphere of operations being quite distinct, and the staff of the civil court were afforded all necessary facilities by the local Commandant, as may be gathered from the accompanying specimen of a “district pass.”

No. 45.

M.L. Form 3.

DISTRICT PASS.



MARTIAL LAW.

Oudtshoorn DISTRICT.

The Bearer, *the Judge President and Party*, has permission to travel in District riding, driving, cycling or walking at any time of day or night.

Available until *Dec. 31, 1901* (unless previously cancelled).

N. Cornish-Bowden, Capt.,
Commandant.

Dated *Commandant's Office, Oudtshoorn,*
28.11.01.

In an area under "martial law," with every exit from the town strictly guarded, it was sometimes convenient to have such a document in one's pocket, if one went for a ride or drive, or an excursion to the famous Cango caves, a wonderful series of vast rock chambers in the Zwartberg mountains, discovered about a century ago, with very singular and monumental formations of stalactite and stalagmite. These caverns, about two hours' drive from Oudtshoorn, are the great sight of the district. They are the property of the Government, who provide a caretaker and guide. At present, they are not very easily accessible—though something has been done of late years, by the construction of paths and ladder-stairways, to facilitate their exploration—and parties have to be specially organised for a visit. They are, indeed, well worth seeing, and probably some day, when the railway, for which Oudtshoorn has long been insistent, actually arrives, will form the object of one of those "personally conducted" excursions, which constitute such a pleasing and characteristic feature of our modern civilisation.

From Oudtshoorn we found it unnecessary to return to the coast. The neighbouring districts, at the time of our departure, were reported quiet, and we accordingly made for the railroad, about 75 miles off, over the Zwartberg Pass, one of the finest pieces of engineering in South Africa. The pass was constructed, a good many years ago, by convict labour. It rises for many miles to a great height, and is stiff enough to

demand a good team and skilled driver for the journey, which affords a splendid panorama of constantly changing views over the rich Cango and West Cango valleys. An accident to our mule transport, which broke down while descending the pass, detained us for a day at the village of Prince Albert, on the other side of the mountain; but, although the escort was still considered indispensable, and its members sedulously "searched the kopjes" on each side of our track, we arrived, without further incident, at a wayside station on the railway which threads the karoo, coming once more within the ambit of the block-house system, and under the protection, convenient during "a sort of a war," of "details guarding the line."

A GREAT ADVENTURER



A GREAT ADVENTURER

*Vixit: præcipuit mors immatura dolenti
fautorem populo præsidiumque suis.
Impiger imperiū latus extendere fines
dignus erat patriæ quem sequeretur amor.
Talia molitum si quis ibi flexerit error
nullatenus veniam sæcula futura dabunt.
Posteriore fovenda diu restabit imago
tempore paræque operum magni superstes erit.*
A.D. VII. Kal. Apr. MCMII.

A GOOD many years ago I was showing Cecil Rhodes some of the recent accessions of the Kimberley Public Library, which had just moved into a permanent home, in the establishment of which he had taken much interest. Among them were the first few volumes of the "Dictionary of National Biography." I explained the scope of the work, and that, as was then estimated, it would run to some fifty volumes, one of which was to appear on every quarter-day. "Well," he said, "it's a splendid idea, but the drawback is, you and I will never live to see the end of it." The last volume of the Supplement—the sixty-sixth of the series—was placed on our shelves a month or two before his death. His remark was obviously inspired by the same sentiment as that which he addressed to the old man who

was planting oaks—he admired his imagination. He could himself, in his own way, be more imaginative than most people, as is sufficiently shown by his testamentary dispositions. Will there ever, I wonder, be another Supplement of the great Dictionary, and to whom, in that case, will Mr. Sidney Lee, or his successor, entrust the task of describing the career of the remarkable man—ἑκπαγλὸς ἀνὴρ—who so briefly survived the epoch embraced by that monumental work?

I do not think Mr. Rhodes anticipated a long life. From his early youth he had known that his heart was weak, and he never liked to live or sleep except within call, in case of emergency, of some trusty servant or friend. But he had a great belief in his destiny, and hoped to witness, at all events, the partial realisation of many of the ideas and schemes on which that weak heart was set. He could be very patient, with both men and things; if he was sometimes intolerant of opposition and too much in a hurry to force events, there may be some indulgence for one who wanted to do great things and who felt that his time for doing them might be short. The irritable temper, which of late often proved trying to those about him, was mainly attributable, in the opinion of those who knew best, to the physical crisis which was approaching and to which, after a brave struggle, he was destined to succumb.

To these alleged defects of manner and temper, I

think I should add that I cannot testify from any personal experience. Of late years our intercourse was only occasional; but on his visits to Kimberley I used to see a good deal of him, and found him, though evidently shaken in health, as courteous and agreeable as ever. He accepted, from time to time, my modest hospitality, but was much more often my host, as he was reluctant to go out at night. I think he rather enjoyed, by way of a change, discussing things with some one who frequently differed from his views; and we were often in that respect, like Carlyle and Sterling, "save in opinion not disagreeing." I remember our last serious conversation was on the subject of the vehicle of education in the new Colonies. He was in favour of granting public money to schools only on condition that the teaching was in the English language. I suggested that the wiser course would be to give special encouragement to the attainment of a certain standard of proficiency in English. "Well," he said, to sum it up, "I see there is not much between us; I would make English a *sine qua non* and you would bribe them into taking it up!"

Shortly after the death of Mr. Gladstone, I happened to be dining with Rhodes at the Sanatorium at Kimberley, which of late years he used as a residence when staying on the Diamond Fields. It was there that he lived during the siege. Of course he found it an irksome business; and confinement at Kimberley through that anxious period, during the most exhausting season

of the year, after summer had set in with its usual severity, probably stimulated the physical mischief which was already latent. He was no fonder than other people of "martial law;" and, as is notorious, he had some *tracasseries* with the military authorities, in which he appears to have displayed some want of tact. However, while his presence probably animated the attack, he was certainly in many respects the life and soul of the defence. Just before the investment, he sent out emissaries in every direction, with their pockets stuffed full of bank-notes, to purchase horses, of which the need was urgent, while the military, possibly still preferring unmounted men, had no funds available for the purpose. It would indeed be difficult to over-rate the resourceful spirit and forethought which he showed in many ways, in providing relief works for the unemployed—which have resulted in a permanent addition to the amenities, none too numerous, of Kimberley as a place of residence—medical comforts for the sick and wounded, and shelter in the mines, for the civilian population, during the last days of the bombardment.

This, however, is a digression, for which I must offer a word of apology. For the moment I was referring to a somewhat earlier period. Rhodes at the time was fighting his last election. He had rather a stiff contest in the neighbouring constituency of Barkly West, which he had represented since its creation, in 1881, on the annexation to the Cape Colony of the Province of

Griqualand West. It so happened that he was opposed by a young and rising advocate, formerly a clerk of my own, an able speaker and zealous champion of the Afrikaner Bond. Rhodes, after a sharp fight, was elected by a large majority, and was specially gratified that, notwithstanding all the propaganda of Afrikanerism, put in motion against "the author of the Raid," he must have polled something like half the Dutch vote. We afterwards had to try a petition against his return. Through the indiscretion of an agent, on the eve of the poll, rather a nice question arose, on which some of the highest judicial authorities in England were informally consulted. In the end, the petition failed, and there can be no doubt that the verdict of the ballot-box had indicated the real feeling of the electorate towards their old and much tried member.

During the general election, which was very keenly fought, and which resulted practically in a tie, Rhodes was highly indignant against the Mugwumps, as he called them, by whose aid a vote of censure had been carried against the Sprigg Ministry of the day—there is usually at the Cape a Sprigg Ministry of the day—thus precipitating a dissolution and entailing the loss of a Redistribution Bill, which they had themselves supported and which, in the then existing situation, he considered of cardinal importance. I happened to mention to him Mr. Gladstone's description of the Peelites. "The fact is," he once said to Lord Derby,

“we are a political nuisance; we are always putting ourselves up to auction—but we always buy ourselves in.” He repeated the anecdote, with great gusto, in one of his Barkly speeches. I had recently delivered an address on Mr. Gladstone, before a local association, and it had been reported at length in the local newspaper. In the course of conversation, on the occasion I have mentioned, Rhodes said to me: “I see you gave Mr. Gladstone several columns the other day; I suppose when I die you’ll give me at least one.” He did not seem to imply that the prospect added a new terror to the event. “Well,” I replied, “should I survive you, I think, if I began to write, I should need a little more elbow-room than that.” At the time, the contingency scarcely struck me as probable; for, apart from the one weak spot, which was so shortly to prove fatal, he was a man of exceptionally powerful frame and strong physique, and seemed likely to outlive most of his less robust contemporaries.

In the few notes of impressions and reminiscences which, in accordance with his own suggestion, I have endeavoured to put together, I may somewhat exceed the narrow limit indicated by his modesty. They will, however, necessarily be discursive and with no pretension to the form of a biographical essay. At biography, both during his lifetime and since, there have been many attempts, most of them less distinguished for quality than bulk. A really satisfactory Life can perhaps scarcely be anticipated; since,

though few of his contemporaries have been more in touch with great men and great events, he seldom wrote letters or kept papers. Some important papers have, of course, been preserved, as was shown by the recent publication of his correspondence with Mr. Schnadhorst. I happen still to have in my possession a holograph letter, written some years ago, giving me some excellent advice, both pointed and humorous, on a matter of business. It lies before me as I write, and extends over four rather closely-written pages; but I imagine such documents are rare, and that his autograph will command a high quotation in the market for such wares.

Neither has the time come for what it is the fashion to call an "appreciation." Whether Mr. Rhodes was really a great man, or whether, in this or that ingredient, he fell short of this or that conception of greatness, has sometimes been made the theme of rather idle or at best academical contention. *Securus indicat orbis terrarum*. When he left us, at all events, the world did not seem to entertain much doubt about the verdict. Greatness, I take it, is scarcely capable of definition or, if it were, of final predication by contemporary opinion. Great men cannot be labelled with a formula or reduced to a category. That he was a very big man, none can deny; and there is rather a striking apologue of Olive Schreiner's, which puts the case effectively enough from what I may describe as a hostile standpoint, culminating in a note of extorted

admiration. It was difficult, I must add, to see much of him without recognising the fact that of true greatness he undoubtedly possessed some of the essentially characteristic elements. He was a man, with some curious foibles and limitations, not too scrupulous about methods, but endowed, if I may so put it, with an imagination which was at once practical and vivid, and in truth by no means devoid of that touch of spirituality which the "leading journal" rather went out of its way to deny him. Naturally of rather a sluggish temperament, he had the great gift, rare in these days of hurry and pressure, of steadily thinking things out. In the early days he used often to sit for hours on the margin of the De Beers Mine, apparently idling, but really reflecting and getting his ideas into shape. He thus acquired the power of anticipating objections, and convincing others of the practicability of projects which, if advocated by anybody else, would have seemed chimerical. He had not only matured them in his own mind, but realised the best method of investing them with the appearance of simple matters of business or dictates of practical policy. One rather shuns the hackneyed word "magnetic;" but he certainly possessed an exceptional will-power and a peculiar skill in using the topics and arguments which most effectively appealed to his immediate interlocutor or audience. He was thus enabled, by the combination of force and knowledge of character, to exercise a singular ascendancy over all sorts and conditions of

men—illustrious personages and powerful capitalists, politicians and men of business, country farmers, working men and native chiefs—who came within the ambit of his influence. As Lord Rosebery put it, some of his methods may have been less suitable to the mild reign of Queen Victoria than to the spacious days of Queen Elizabeth. He himself, I think at a meeting of the Chartered Company, once said that he did not object to being described as an “adventurer.” The modern usage of the word is, I suppose, almost uniformly dyslogistic. It is one of the many instances in which the verbal currency has been debased. But it is, as he recognised, a good old word, with a pointed applicability to his own career. His mould was that of the great merchant-adventurers of an earlier age, who laid the foundations of that dominion beyond the seas over which King Edward has for the first time, in his style and title, formally recognised the sway of the British Crown. Adventures are to the adventurous; and it was reserved for Mr. Rhodes to show that, even in the nineteenth century, it was still possible for a British subject to be a great adventurer.

When, twenty-three years ago, warned by the doctors that the pursuit of law and literature in the London climate, in the then state of my health, was a risky business, I went out to the Cape, among my fellow-passengers was a young soldier, a man of remarkable ability, very keen in his profession, who afterwards

became a distinguished General. I shall afford no great clue to his identity by observing that he must now be reckoned among those to whose reputation—I feel convinced through no fault of his own—the sinister influence of Africa has proved unkind. On the way out, he asked me whether I knew anything of Mr. Merriman, who he had heard was about the most interesting person in Cape Town. Shortly after my arrival, I met Mr. Merriman and, when I went to Kimberley, he told me to be sure to look out for Cecil Rhodes, then an almost obscure young man, but one who had struck Mr. Merriman as the most interesting individual whom he had met on the Diamond Fields. Since then they have sat together in two Cabinets and subsequently been at opposite poles in politics; but to the last I believe each entertained a good deal of liking and admiration for the other, and they remained on the whole the two most interesting figures in the public life of the Colony. For obvious reasons, the topic is one on which I cannot dilate; for the nonce, I must confine myself to a few personal recollections and impressions, which one feels an impulse to put on paper before they become vague and blurred on the elusive tablets of the memory of those who, as the shadows lengthen on the path and their friends and contemporaries drop on the way-side, feel they have themselves reached that melancholy period of life's journey when *cras mihi* sums up the inevitable reflection.

The first time I heard Rhodes make a speech was in 1881. It must have been one of his earliest efforts in that line. A dinner, at the close of the Parliamentary Session, was given by the Mayor of Kimberley to the representatives of Griqualand West. There had been a political crisis and the Sprigg Ministry of the day, appointed by Sir Bartle Frere in 1878—this was the first of the series—had been compelled to resign. The disastrous attempt to disarm the Basutos, and the military fiasco which ensued, had left them with no margin of parliamentary support; one of the Ministers had retired and a crisis was inevitable. The newly elected members for Griqualand West had gone down to Cape Town, as was understood, prepared to support the Government; the members for Kimberley did so; but Rhodes, carrying with him his Barkly colleague, took a different view. He told the Government whip that he must not reckon on their votes; and the Ministers, thus placed in a minority, had to resign. The attitude of Rhodes was far from popular at Kimberley; when he rose, after the dinner, to make his speech, he met with rather a disconcerting reception; but he reasoned out his position and justified his conduct with so much force and spirit that he quite carried the audience with him and sat down amid repeated cheers. At the time, I was practising at the local bar and doing some newspaper work as well. I remember writing a letter, as the Kimberley correspondent of a Cape Town paper, describing the proceedings,

and specially dwelling on the impression produced by Rhodes's speech, the style of which had somehow reminded me of Mr. Gathorne Hardy, now the venerable Lord Cranbrook, and formerly one of the pillars of the Conservative party in the House of Commons.

In the Parliament of the Cape, as in other Legislatures where "public works" loom large, there is a sort of centripetal tendency. Members are disposed, *ceteris paribus*, or only slightly *imparibus*, to support the Ministry in being, who are the masters of the situation, so far as concerns estimates and grants for roads and railways, for bridges and public buildings, and such-like local boons. Rhodes used to describe it as the policy of the parish pump. The Scanlen Ministry, formed at this period, lasted for three years and in the end went out, as it was said, "on a bug"—there had been some relaxation of the restrictions on the importation of plants, imposed with a view to keep out the phylloxera, which annoyed the wine and brandy farmers of the West—but really, as was understood, on the policy, which they were believed to favour, of the resumption of the Transkeian Territories by the Imperial Government. I cannot however think that Rhodes, who had been a Minister only for a few weeks, was personally in sympathy with this course, and there is probably no colonial politician who would now advocate its adoption. The only question, indeed, of practical politics is whether, in any future re-adjustment of boundaries, the sister Colony of Natal may not

advance a strong claim to the cession of Griqualand East. Rhodes had joined the Ministry as Treasurer; but, like Lord Randolph, he was a Chancellor of the Exchequer who never produced a Budget. The most interesting fact about his first experience of office was that it was largely on account of having undertaken it that he felt unable to accept the offer, cabled to him by General Gordon—who had met him when endeavouring to unravel the tangled skein of Basutoland affairs—to accompany him on that mission to “withdraw the garrisons” of the Soudan, which culminated in the calamity of Khartoum.

The reason which made Rhodes's personality so interesting and attractive, when first they met him, to such men as General Gordon and General Warren—with whom he was afterwards sharply at variance over the settlement of Bechuanaland—men as they were of both thought and action, was that he was evidently a man of original ideas, with his mind bent on something beyond the mere getting and spending which limits the ambition and lays waste the powers of the average man—*l'homme moyen sensuel*—in the Colonies as elsewhere. Moreover, with all his *brusquerie*, his manners were essentially those of an English gentleman. The story is well known of how Warren, meeting him for the first time on a post-cart journey, was struck by the assiduity with which Rhodes, who was the least self-conscious of men, was studying his book of Common Prayer. In the end, a natural curiosity overcame his reserve, and

he made some remark which elicited the explanation that his fellow-traveller, on the African highway, was getting up the Thirty-nine Articles for his next Oxford examination. For Oxford indeed, and for Oriel—the hospitality of whose Provost he specially enjoyed—he had that deep affection which Oxford seems to have a peculiar capacity for inspiring in the worthiest of her sons; he was even rather proud of possessing the Bullingdon uniform—a social Club I believe mainly composed of members of “the House”—and always wore it on occasions when something was required in the way of fancy-dress. When he went to take his Doctor’s degree, the opposition evoked—for which indeed in the circumstances there was something to be said—only increased the enthusiasm of the undergraduates, and he declared, with a sort of boyish glee and, as I was told by an eye-witness, with perfect truth, “Why, I got a bigger reception than Kitchener himself.” There was some rumour of a possible veto by the Proctors. “Had the degree been non-placeted,” the Vice-Chancellor wrote to a friend at the Cape, “I should have had to dissolve the congregation !”

From his early studies, at school and college, desultory and intermittent as they were, his mind retained a certain bent. He was specially interested in history and antiquities. For literature in itself he cared but little; he did not appreciate it as an art; but he possessed a very retentive memory, not impaired and marred, as is the case with so many of us, by too much

indulgence in the pernicious habit of promiscuous reading. I remember the enthusiasm with which he once feasted on "Salammbô," devouring it in an indifferent translation, for, whatever proficiency he may have acquired as a boy, as a man he had no grip of any language but his own. He was a great student of the history of the Roman Empire; and I believe that it was owing to an allusion that I once made to the work, in the course of conversation, that he read the whole of Gibbon, in a cheap edition of four closely-printed volumes, which was all the Kimberley Library then could boast. I fear I may have been indirectly responsible for his lavish outlay on a project rather curious than valuable. He had been struck by Gibbon's many references to various Greek and Roman writers, more or less obscure, whose works he found on inquiry had never been translated. Accordingly he gave a commission for them all to be done into English, typed and bound; and the collection forms a unique feature of the library at Groote Schuur. I hesitate to mention the amount of the little bill which he received for the job; according to my informant, who ought to have known, it was scarcely covered by four figures.

We once had another conversation, for which also I have always felt some responsibility. It was after he had been endeavouring, at the request of Sir Hercules Robinson, to settle the trouble in Bechuana-land. At that time it was said of Sir Hercules, who was a model of constitutional propriety, that, as

Governor of the Cape, he acted on the advice of his Ministers—there was the usual Sprigg Ministry of the day—and as High Commissioner on that of one of the leaders of the Opposition. After the thing was over, Rhodes was offered some small decoration, which he did not care about. He said he would prefer a letter of thanks from the Colonial Office. The thing was unusual, and there was some demur; but he was a man who generally got what he wanted, and in the end he had his letter. For Sir Hercules, Rhodes always had a great respect and liking. Perhaps, at this date, there may be no indiscretion in mentioning that I once asked Mr. Buxton, who had been at the time the representative of the Colonial Office in the House of Commons, what was the real reason why Lord Rosmead, as he then was, at his advanced age, had been asked to go back to the Cape when Lord Loch came home. It had been supposed that a certain passage about “Imperialism in South Africa,” in a speech which he had made before leaving in 1889, would constitute an effectual obstacle to his return. “Well,” Mr. Buxton replied, “in the first place we knew that trouble was brewing in South Africa, and we felt that his experience and prudence might prove invaluable; in the second place, we also knew that Rhodes wanted it, and we recognised that the Governor must be a *persona grata* to the Prime Minister, who at that time was all-powerful at the Cape.”

When mentioning the offer of the decoration,

Rhodes asked what I thought about such compliments and whether he ought to accept anything of the kind. I said that, in his position, I should look forward to the Privy Council. The details of our constitutional system were not then very familiar to him, and he asked for some explanations on the subject, which I supplied, and in which he seemed much interested. When the Queen, on Lord Rosebery's advice, called him to the Board, he was highly gratified ; and, though subsequent events might have precluded the nomination, I don't think there was ever much sympathy with the agitation for the removal of his name from the list. Sovereigns themselves can scarce recall their gifts. He was sworn at Osborne, when on the point of leaving for the Cape, the mail steamer waiting for him off Cowes. On a previous occasion, he had dined with the Queen and been impressed by her keen interest in detail and statesmanlike breadth of view. On his recollections of the presence it might be unbecoming to dilate ; but there may be no harm in mentioning a story, which he told me, of his recent interview with the German Emperor. This meeting had become advisable on account of his transcontinental schemes. As may be remembered, Lord Rosebery had acquired certain leasehold rights from the Congo State, which, as it turned out, that State had no power to give. They were precluded by stipulations, framed in the interests of Germany and France, and included in the organic instrument, known as the Articles of Berlin. The

Emperor dined with the British Ambassador to meet Rhodes. In the course of conversation he told him that he had never quite understood why the British people, after Dr. Jameson's proceedings had been so energetically repudiated, should have been so indignant about a certain telegram. "Well, Sir," Rhodes replied, "I think the feeling was that our own mother had just given us a sound beating, and they didn't like the idea of any one else coming down on us in our trouble." The Emperor said that he understood the sentiment and admitted there was something in it. He was not the only European Sovereign whom Rhodes met ; there was at least one other, whose views on African topics produced a less favourable impression. I remember he once told me, knowing my admiration for Mr. Gladstone, that the latter, while discussing with him the question of Uganda, had been careful to explain that he had never been a man for peace at any price. "Take the case," he proceeded, "of the small nationalities ; do you know, for instance, that I would fight for Belgium ?" As a matter of fact, as he once reminded the House, we are bound by treaty, should the contingency arise, to do so. I told Rhodes that I was not surprised at the old man expressing a sentiment to which he had given practical effect, as Prime Minister, when the war broke out between Germany and France, and that I myself clearly remembered the indignation with which he had repudiated, in the House of Commons, the language of a former colleague, who had referred in a speech to

“the miserable monarchy of Belgium.” In appreciating the merits of monarchies it may sometimes be advisable to eliminate the personal element.

The feeling for the Empire was with Rhodes not only a genuine but a dominant sentiment; it was indeed a sort of passion. When the Queen’s Jubilee was celebrated, I took some part in the proceedings of a local Committee for its commemoration. I ventured to suggest that the funds subscribed should not be entirely appropriated to local purposes, but that we should make a substantial contribution to the proposed Imperial Institute. There was a good deal of scepticism about that project, which perhaps to some extent I shared; but, after all, the Prince of Wales had publicly stated that it was what the Queen herself would wish, and, on such an occasion, that seemed decisive. The suggestion, however, encountered considerable opposition from some of the clerical element and others, who were brimming with schemes of local philanthropy; visions of new and improved tabernacles appeared to cross their minds. During the discussion, Rhodes happened to arrive in Kimberley; he at once threw his weight in favour of the contribution to the Institute; the objections promptly subsided, and the Kimberley Committee was enrolled among the founders of that edifice.

The story of the “all-night sitting,” which ended in the final amalgamation of the mines, has often been told. In the end Barnato, though not thinking it

“good business,” yielded to the determination of Rhodes, supported by Beit, that the wealth of the Diamond Fields should furnish some of the sinews of war for his policy of expansion. The De Beers shareholders have suffered no loss; and there was a time when, without the funds so supplied, largely supplemented by Rhodes out of his own purse, Rhodesia might have failed to survive the struggles of a chequered infancy. It so happened that these and other negotiations, scarcely less interesting in their way, were all completed in a cottage which then belonged to Dr. Jameson, which, after he left Kimberley, was purchased by the present writer, and where I am now writing these lines.

Rhodes had more than one sharp tussle with Barnato and showed himself at least the equal in mother wit of that astute specimen of an astute race. At one time, it was a question of controlling the diamond market. Barnato exhibited with pride a vast stock of stones. “I will take the lot,” said Rhodes, “if they will fill that bucket. I should like, just for once, to see a bucket-full of diamonds.” Into a bucket, lying handy, they were accordingly poured. It took at least six months to sort and value them, and Rhodes meanwhile was in a position to make the necessary financial arrangements at his leisure.

He was a man who could enjoy a joke; but he liked to be the one who laughed last. In the early days he was once out shooting with some legal friends,

some miles from Kimberley. They had a cart, he was riding a pony. He wandered off alone, as was rather his habit, and, when it grew late, they drove home without him. But Rhodes's pony fell lame and he had to trudge back in the dark. After several times losing his way, he arrived, about midnight, in high dudgeon, at the house of his old friend, Mr. Rudd, who was then living in the outskirts of "the camp," where he spent the night. Next day he told Rudd to keep his counsel and, instead of going to his office as usual—he was a busy man, but he sacrificed a day's work—remained quietly at the house, reading a novel. Meanwhile his shooting companions became more and more uneasy, organised a search party, scoured the veld and visited all the neighbouring farms. All the day they sought for him sorrowing; they began to feel remorse and something like despair. On the following morning Rhodes quietly turned up at the Club for breakfast and some animated explanations ensued. They were of course highly indignant with him for his *nonchalance*; but he explained that they fully deserved their scare for having deserted him in the veld, with a pony they ought to have known was lame.

He had the invaluable gift of being able to command sleep—*instantem et descrentem*—whenever he felt inclined. Often, when out shooting, he would take a nap under a bush, with a stone for his pillow. On one occasion a dinner-party was given in his honour. The hour arrived, and the other guests; after waiting for

him for some time in vain, it was concluded that he must have forgotten his engagement. After dinner some of the party went into another room, where they found him asleep in an arm-chair. He had walked in unannounced, rather before the time, and, finding no one in the drawing-room, had strolled into the next room, sat down and promptly fallen asleep, heedless of the convivial board and flowing bowl. It was an illustration of the old proverb—*qui dort, dine*.

Rhodes, as I have said, could be patient enough, when it was worth his while. The quality was severely strained when, for six sessions, he sat in the Cape Parliament as Prime Minister. He had colleagues better acquainted with the forms of the House and the details of procedure; but he never admitted that in such matters he was himself a child. That was not his way. On the contrary, he usually stuck to his place, as leader of the House, from the commencement of the sitting till the hour of adjournment arrived, suffering many things, enduring long harangues on tedious subjects, often delivered in a language which he imperfectly understood, but ever on the alert, if trouble arose, to pour oil on the ruffled surface and suggest something in the nature of a *billijke schikking* or "reasonable compromise." His object was very simple—to conciliate the Dutch in questions of parochial politics, and so secure their support in the matters in which, almost if not quite alone in that Assembly, he was deeply interested.

The Dutchmen got to know and like him. One of them, on a visit to Groote Schuur, picked up a pebble in the path, which he proceeded to pocket. "What are you doing with that stone of mine, Mr. C—?" said Rhodes, who had observed the action. "Mr. Rhodes," was the answer, "I am going to keep it as a souvenir of my visit to your place." "I will give you something more useful," Rhodes replied, and before he left presented him with a capacious snuff-box. After the raid, it is said, the stone was solemnly returned, by parcel post; but Mr. C— somehow forgot to enclose the snuff-box.

Of all the statesmen of the day the one whom Rhodes apparently most disliked was Sir William Harcourt. This sentiment was probably not unconnected with his strong admiration for and personal friendship with Lord Rosebery. In English politics he put his faith in Lord Rosebery and Sir Edward Grey. Knowing that there were breakers ahead in South Africa, and anxious that nothing should jeopardise his schemes for the expansion of the empire, he always kept an eye on the European situation. It will be remembered that he once told the French Ambassador in London—I think it was the Baron de Courcel—that nothing was so likely to lead to a breach of the peace as a French expedition to the sources of the Nile, cutting the route from Uganda to Khartoum. When asked why he spoke so positively, he said that Lord Rosebery had assured him that he would regard such

an occurrence as a *casus belli*; "and you may be sure," he added, "if Rosebery takes that view, the Conservatives would if anything be worse." It was, in fact, an issue on which Lord Salisbury, with Lord Rosebery's staunch support, for once stood firm. In any case, this conversation coupled with Sir E. Grey's official statement in the House, should have prevented M. Hanotaux from committing a blunder which it took all the tact and statesmanship of M. Delcassé to repair.

Against Sir William Harcourt, whom it was at one time contemplated that Dr. Jameson should oppose in Monmouth, Rhodes, as I have mentioned, seemed to have a marked prejudice, regarding him, perhaps rather incongruously, as the typical "little Englander," whom it is the fashion of the hour to denounce in the Harmsworth press. To this feeling he once gave public expression in terms which were not compatible with good taste. I have an impression that the aversion was not reciprocal. I remember Sir William, with whom I had the honour of some slight acquaintance, and who I hope will forgive the allusion, leaving his place as leader of the Opposition, and coming to the end of the House for a few minutes' talk, as I was sitting under the clock. It was at the beginning of the Session of 1896, just after the Raid, and we had a brief conversation as to the situation at the Cape, and the prospects of Mr. Rhodes, of whom personally he spoke in no unfriendly terms. But it so happened that at the subsequent Inquiry, before the Committee, it

became his duty, so to speak, to hold the leading brief for the prosecution. He did his work with the thoroughness of one who combined the shrewdness of a lawyer, well versed in handling such tribunals, with the broad capacity of a statesman. Rhodes was a man who, in such matters, had a great capacity for personal resentment. There were few better friends, but he probably agreed with Tennyson, who is said to have declared that his own favourite line in the "Idylls" was "He makes no friend who never made a foe." His feelings towards Sir William, after that Inquiry, were akin to those which he entertained with regard to Lord Russell of Killowen after the summing up in the State Trial of *R. vs. Jameson and others*. It was Lord Russell whom he had in mind when he referred to the "unctuous rectitude" of the British public.

As I have said, he was the most staunch of friends; and in both cases the object of his animosity had, as he conceived, been hard on Jameson. His own affection for that gentleman, rather curiously, is said to have begun, in the early days at Kimberley, with that "little aversion" of which the consequences are proverbial. In 1896, the year, as he always put it, of his "great trouble," he was up in Rhodesia, when Lord Grey, then acting as Administrator, came and said he had bad news for him. Jameson at the time was in prison and seriously ill. The news was that Groote Schuur had been burnt to the ground, and of his valuable collections but little had been saved. Passions

at the time ran high, and there was some reason to fear that the fire had not been accidental. "Thank God," said Rhodes, when Lord Grey told him of the disaster; "I was afraid when you came that Jameson was dead!"

"Mr. Rhodes," Sir William Harcourt is said to have once remarked, after a talk with him at an earlier period of his career, "is a very reasonable man. He only wants two things. Give him Protection and give him Slavery and he will be perfectly contented." The remark was what Rhodes would have called an epigram. He had a strong idea that the sacred right of man to live in idleness, provided he possessed a coloured integument, was not as catholic and universal a dogma as the famous canon of St. Vincent of Lerins. His plan was by the gentle stimulus of moderate taxation—the proceeds of which were to be applied by representative bodies, elected by and from the natives themselves, for purposes of local improvements—to give the black brother an incentive to earn his share of the good things of civilisation. When Prime Minister he embodied it in a piece of legislation, the enactment of which cost the Cape Parliament one of its rare all-night sittings, and of which the results have on the whole justified the experiment. The system however requires the most careful watching; and the South African capitalist will have to be vigilantly supervised, by superior authority, if the native in the future is to have fair play. As to protection, well, we are no longer in

the days of the Manchester School. Sir Wilfrid Laurier, I believe, is a medallist of the Cobden Club; and the Secretary himself of that institution has recently been denounced, by so eminent an authority as M. Yves Guyot, as distinctly heretical on the question of the bounties on sugar. On such subjects as compulsory labour and Imperial Zollvereins we shall probably hear a good deal more before the century is much older. The topic however is one of which space forbids the pursuit. The image of the blue pencil crosses my mind.

Some of Mr. Rhodes's ideas may have been crude and his theories economically unsound. He was in some respects a visionary, and for the doctrinaire he had scant esteem. But of the visions which he saw, and the dreams he dreamt, much has already become concrete. He probably to a great extent realised his ambition in leaving the Empire so much bigger than he found it. Few indeed are the men, since history began, who, in so short a period, have left so deep an imprint on the annals of their time. The great adventurer has left us while the hurricane still beats; shall we prove equal to the responsibilities which he did so much to enlarge?

Kimberley, April 6, 1902.¹

¹ This paper was written a few days after the death of Mr. Rhodes, and before any of the obituary notices published in England had reached South Africa. Since it was written, some of the topics dealt with have been treated, perhaps more effectively, by other writers: but on the whole I have preferred to leave it, as a personal impression, in its original form.

A GREAT IRISHMAN

A GREAT IRISHMAN¹

SOME forty years ago, three young barristers were dining together on the Northern Circuit. Two of them were in a very gloomy mood. They almost despaired of success at home and one of them thought of going to the Straits Settlement, the other to the Indian Bar. In the end they remained where they were, and became respectively Lord Chancellor of England and Speaker of the House of Commons. The third, who tells the tale, was to die Lord Chief Justice of England. His death, after a few days' illness and a critical operation, while still apparently in the full vigour of his powers, seemed sadly premature; but it was not too early for him to have added, in the last phase, to the fame of a consummate advocate, the reputation of a great Judge.

Russell, Herschell and Gully certainly formed a remarkable trio. Practically contemporaries, they all had joined the greatest of the old circuits. They all had political aspirations and had all embraced the Liberal cause. Herschell was the first to enter

¹ "The Life of Lord Russell of Killowen," by R. Barry O'Brien. London: Smith, Elder & Co. 1901.

Parliament, having, during the *débâcle* of 1874, won the always doubtful seat of Durham, for which Russell had at first been asked to stand. On further consideration, it was thought that his religious faith would diminish his prospects of success in that cathedral city ; and, for the second time, he stood, as a Liberal, for Dundalk, and was for the second time defeated, by a narrow majority, by a Home Ruler. At the next election, however, he turned the tables on his opponent and became the last representative of that minute borough. Dundalk was*disfranchised by the Reform Bill of 1885, after which he represented one of the Divisions of Hackney. His opponent there was the present Mr. Justice Darling, of whom, when appointed to the bench, he is said to have remarked that it was the first time he had seen him with a wig on. Herschell meanwhile had acquired some reputation as a private member. The writer of this article remembers well being present in the House when he achieved his first marked success in that capacity. It was on a Wednesday afternoon, when he moved and carried the second reading of a Bill for the abolition of the action for breach of promise of marriage. When he came into the lobby, and was being congratulated on the result of the division, he seemed both gratified and amused, and withal somewhat surprised, at the successful issue. It was in fact one of those rare occasions on which members can vote as they please and are really influenced by speeches. His argument produced a

strong impression ; but the Bill shared the usual fate of such attempts, by private members, to alter the law of the land.

Not long afterwards, he became Solicitor-General. His way to the woolsack was smoothed by the circumstance that Sir William Harcourt, in 1880, had preferred a seat in the Cabinet, as Home Secretary, to the resumption of his position as a law officer, while Sir Henry James, at a later date, following the conscientious example of Lord Selborne, declined the Chancellorship through inability to follow his chief in his Irish policy. Lord Herschell, it is understood, did not forget the claims to recognition, both political and personal, of Mr. Gully, who had meanwhile become member for Carlisle. He is said to have promised him the first vacancy on the Bench. But, when it occurred, the whips objected ; the position of the Ministry was precarious ; Carlisle was a shaky seat ; and for the judicial appointment an excellent substitute was found in another member of the same circuit, Mr. Kennedy, who fortunately had no seat to vacate. The sequel was that, very shortly afterwards, Mr. Gully was elected Speaker, by a strict party vote, and by a very narrow majority. The Conservatives—who had had no Speaker of their own for sixty years—threatened a renewal of the contest and did, in fact, contrary to the usual custom, oppose his re-election, at the ensuing dissolution, for Carlisle. But after the general election, with their sweeping majority, they could afford to adhere to a

wholesome tradition of parliamentary life; and Mr. Gully was unanimously re-elected to the Chair, which he has occupied with general acceptance ever since.

The third member of the little circuit dinner-party was the late Lord Russell of Killowen. He does not seem to have shared the despondency of his comrades, and indeed had no reason for doing so. It appears, however, as we gather from Mr. O'Brien's *Life*—a scrappy, gossipy, rather egotistical piece of work, which scarcely contains a dull page—that, before he was called to the bar, he did contemplate the possibility of settling in Australia, and made some inquiries about the state of the legal profession at Melbourne. The moral, if moral there be, may perhaps be drawn that if a barrister, at the outset of his career, blessed with brains and a good constitution, has, or can earn, enough coin to buy bread and cheese at home, he should think twice before deciding on expatriation. In a Colony, he may get on more rapidly and soon acquire some measure of distinction, either forensic or political, or both. But, whether at the bar or on the bench, he must be content, for the rest of his days, with an income which a rising junior in London would despise as a meagre pittance; and, what perhaps is of more importance—for, after all, man does not live by bread alone—he must be prepared in large measure to forego many of those amenities—sympathetic comradeship, congenial society, the gratification of artistic tastes, facilities for

agreeable and recreative travel—which make life most worth living.

Russell, as we have said, did well from the first and was soon earning more than bread and cheese. He showed his courage by marrying before he was called, on a capital of a thousand pounds, which he received from his mother. In his first year he made over a hundred pounds in fees and also did some writing for the press. For the next three years his income—mainly earned at Liverpool, where he got his chance from a leading Catholic solicitor, to whom he had an introduction from his uncle, Dr. Russell of Maynooth—increased in geometrical progression. Within ten years of his call, he was making between £3,000 and £4,000 a year. Shortly afterwards, in 1872, at the age of forty, he took silk. In 1874 his fees exceeded £10,000, and fluctuated, during the next twenty years, between that and £20,000, a figure only once exceeded, in 1893, when his professional income, as Attorney-General, amounted to £22,517. These are big figures and required a big man to make them, one who was strong, both mentally and physically, and knew how to utilise to the full both his own strength and that of others. It was said that Russell had half a dozen devils to work for him and so was enabled to do six men's work. Though not avaricious, and on occasion extremely generous, he knew how to value his services; and in fact, at one time his high fees, coupled with his bad manners, caused so much demur that a "boycott"

was attempted by the Liverpool solicitors, and fell through only because one of the leading firms thought no one else could do justice to their briefs. There are few indispensable men; Russell at this time, on the Northern Circuit, happened to belong to that limited category; when and where they exist, they can practically make their own terms.

His course, however, during the earlier years was not all plain-sailing. He entered on his professional career with no conspicuous advantages. As a youth, he was considered industrious and intelligent but far from brilliant. He had no academical reputation; and, though he matriculated at Trinity College, Dublin, he left, without taking a degree, to serve his articles in a country town. The degree came afterwards; it was that of Doctor of Laws, conferred *honoris causa*, which, as he good-humouredly remarked, he understood to mean, being freely translated, "in the absence of any distinct scholarly merit." After practising with some success as a solicitor at Belfast, he was recommended to go to the English bar. The advice came from two Irish Protestants—a Dean and a County-Court Judge—and was based in substance on the ground that for an ambitious barrister, who was also a Catholic and a patriot, there was in Ireland no professional career. The result of such a state of things may sometimes be England's gain but assuredly is Ireland's loss. He may have felt there was some personal applicability in a story he related, during his visit to America, "of a

distinguished American politician who, after a presidential election, in which his candidate had been ignominiously defeated, and defeated largely by the Irish vote, called upon Mr. Lowell. The visitor ventilated his grievances, speaking with no sparing tongue of what he considered to be the misguided action of our fellow-countrymen across the Atlantic; and Mr. Lowell proceeded to talk on indifferent subjects. At last he said, 'And where are you going to spend your holiday?' 'Well,' said his visitor, 'I think I shall spend it in Ireland.' 'In Ireland!' said Mr. Lowell, 'after all the abuse you have been lavishing on the Irish?' 'Well, I guess,' was the reply, 'that is about the only country in the world where English is spoken *where the Irish don't rule!*'"

In England, every position was open to him, with one exception, which probably was scarcely in his mind when he made the plunge, left Belfast, and entered at Lincoln's Inn, the most distinguished, as he was justified in claiming, in its roll of membership, of the four Inns of Court. The present writer well remembers the last occasion on which he had the privilege of seeing and hearing Mr. Gladstone. It was on another Wednesday afternoon in the House of Commons. He was then over eighty and he moved, as a private member, in a speech of marvellous vigour and eloquence, the second reading of a Bill for the abolition of the last shreds of Catholic disabilities, which attach to the offices of Lord Lieutenant of Ireland and Lord Chancellor of England.

The bill was sarcastically described as the "Ripon and Russell Relief Bill." The jest at the time seemed rather pointless, since the party had an admirable ex-Chancellor in Herschell and Lord Ripon was not the only peer available for Dublin Castle. But a letter written some years afterwards by Mr. Gladstone to Lord Russell, on his appointment as Chief Justice, seems to give some colour to the suggestion:—"I have never," he wrote, "got over my wrath at the failure of our effort to repeal the unjust and now ridiculous law which kept the highest office in your profession out of your reach. It is, however, some consolation to reflect that you are on a throne only a little less elevated, and very far more secure. From that seat I hope you will for a long time continue to dispense justice in health, prosperity and renown."

As already observed, there was nothing, when Russell joined the bar, to indicate that he was destined for a career of rapid and brilliant success. His equipment indeed seemed somewhat limited. He enjoyed no University prestige or professional connection. His was not a subtle mind, like that, for instance of Herschell. He was not a well-read man and he never cared for reading. Of history, even of Irish history, he knew little—not indeed so little as Parnell, but little enough to be greatly indebted to his biographer for the "coaching" he got from him at the time of the Parnell Commission. He was never a great orator or amusing speaker; and he almost entirely lacked that sense of

humour which is traditionally associated with the Irish temperament, but of which somehow we meet with so little among prominent Irishmen of the present day. There is still plenty of it, we fancy, in the talk of priests and peasants and the persiflage of drivers of jaunting cars; but what Irish lawyer or politician in recent years, except the late Lord Morris and Mr. Healy, has been in any way remarkable for that quality? Perhaps the best thing attributed to Russell by his biographer, who saw a great deal of him and was a bit of a Boswell, was his definition of the penalty of bigamy—"two mothers-in-law;" but in that he was really anticipated by Palmerston, who described the converse bliss as the most cogent argument in favour of marriage with a deceased wife's sister. The best joke of its kind, which is quite authentic, recorded in Mr. O'Brien's book is one which was the result of a slight misapprehension. Lord Russell was trying a man who was addressing the jury in his own defence, and as usual was listening attentively to what he said. "I did not quite catch that," he said to the prisoner; "what was your last sentence?" "Six months, my lord," was the ingenuous reply.

For his other deficiencies, Russell certainly did not make up by a pleasant address or any suavity of temper. His manners indeed were sometimes atrocious. An interview with him, when in an irritable mood, if we may judge from Mr. O'Brien's *verbatim* report of one such experience, must have been to a stranger a

terrible ordeal. "He was not," as Lord Justice Mathew mildly puts it, in his interesting article in the Supplement to the "Dictionary of National Biography," "a pleasant antagonist." He was indeed impartially disagreeable and overbearing—to the Judge who tried to keep him in order, to his opponent at the bar, to hostile witnesses, in dealing with whom he was sometimes inclined to exceed the legitimate limits of the discretion necessarily allowed to counsel in cross-examination, to the junior who had to coach him as to the facts, to the solicitor who retained him and the client who paid, on a high scale, for the advantage of his services. And yet he made no permanent enemies. It was somehow felt that, though never afraid to strike, he did not really intend to wound. He was simply carried away by his strenuous temperament, the eager delight of battle with his peers and the keen effort for victory. We say with his peers, for on the Northern Circuit there were giants in those days. He had to measure swords with Holker and Herschell, Benjamin and Pope. They have all now joined the majority; and of the men then coming to the front perhaps the most distinguished were the present Speaker and the present Master of the Rolls. Among men of that calibre, hard blows were struck but no malice was borne. Russell was described by Bowen as producing the impression of an "elemental force;" and an elemental force is always an awkward thing to encounter or oppose. Though his bearing and demeanour were often justly resented, he was known to

be really one of the most kind-hearted and generous of men. Among his papers was found a letter from a client, saying, "I could hardly credit the fact of a great Q.C. giving advice gratis to a perfect stranger, and then to pay solicitors' fees out of his own pocket; such a generosity exceeded my most sanguine expectations." Another instance of his willingness to help a friend was afforded by the novelist, James Payn, whom he sometimes met at that celebrated lunch-table at the Reform Club, where Payn and Black, and one or two other kindred spirits, in literature and journalism, used at one time daily to try and improve each other's minds. "On one occasion Payn wanted legal help in writing a novel. He mentioned the matter to Russell, and Russell told him what the law was. Payn used to say no doubt it was plain enough to a lawyer, but it seemed Greek to him. Russell saw that he did not quite understand it. A day or two after Payn received a long and carefully written opinion from Russell making everything so clear that he was able to grasp it. He often said that, of the many kind acts he had experienced in his life, he thought it was the kindest." It may be remembered that Mr. Frederic Harrison once rendered a similar service to George Eliot.

What was the secret of Russell's forensic success, of his supremacy as an advocate? It lay above all in his personality, of which it was easier to feel than to describe the dominant influence on all who came within its sphere. With a strenuous energy he

combined what has been well characterised as a "creative receptivity." Mr. Gladstone once said of the orator that, like the clouds in the atmosphere, he should receive from his audience in a vapour what he poured back on them in a flood. Russell was a most careful listener, to those he thought might help him, examined and tested everything which was submitted, insisted on having a clear and succinct note of the material facts in every case, and, with wonderful rapidity, as it were by a sort of instinct, discarded the superfluous, assimilated the essential and went straight to the root of the whole matter. His presence, voice and manner were peculiarly impressive, and he never knew when he was beaten. The result was that he often swayed the Bench, and the case had to be a very hopeless one in which he failed to secure the verdict of the jury. Such a case, for instance, was that of O'Donnell, whom he defended, with great ingenuity and skill, for the murder of the informer Carey, on the voyage from Cape Town to Natal.

In some departments he had special knowledge, of which he made the fullest use. In commercial cases, both at the bar and when on the bench, his extensive experience at Liverpool stood him in good stead ; while in affairs connected with the turf—such as the cause *célèbre* of *Chetwynd v. Durham*—he was an acknowledged expert. He was in fact almost as well known at Newmarket as at Westminster and as good a judge of horses as he was of men. One day in Court he is said to have received

two telegrams. The first informed him that a horse, which he had given instructions to back, had won its race, and he felt highly complacent. Shortly afterwards there arrived a second message, explaining, with apologies, that his agent had forgotten to execute his commission. It was enough to ruffle the sweetest temper, and it is to be feared that his junior must have experienced an exceptionally *mauvais quart d'heure*. When he had done his last day's work at the bar and returned home, his son asked him, "How did you get on to-day?" "Very well," was the reply. "I succeeded;" and then, after a pause, he added: "I am glad my last mount was a winning one."

Among the criminal cases in which Russell occasionally appeared, none excited more general interest than that in which he defended Mrs. Maybrick on the charge of poisoning her husband. The trial took place at Liverpool, before Mr. Justice Stephen, whose great powers had then begun to wane. Russell always maintained that the evidence did not justify the conviction. The sentence was commuted to penal servitude for life, on the ground that, while there was room for doubt as to the actual cause of death, there was sufficient proof that the accused had administered arsenic with intent to murder. Russell's great point—which he urged on the Home Office with characteristic persistency, writing to Sir Matthew Ridley on the subject more than once after his own appointment to the bench—was that his client had been tried for one offence and convicted,

by the Home Secretary, of another. If, he contended, she had been charged with attempt to murder, the defence would have been directed to that point and might have been quite differently shaped. By the law of the Cape Colony (Act 3, 1861, sec. 8) on any indictment for a substantive offence, the jury can convict of an attempt to commit it; but it is obvious that, even where the law permits this course, the discretion, especially in capital cases, should be exercised with extreme caution and, it may be suggested, only where the point has been mooted by the Crown at a stage when it can be efficiently dealt with by the defence.

Russell was not only a great lawyer but a great patriot. His opening speech before the Parnell Commission, about which he took infinite pains, at a great pecuniary sacrifice, was a most effective presentation, from an historical stand-point, of the case for Ireland. In view of this Inquiry, he had returned the general retainer of *The Times*, peremptorily repudiating a suggestion from their solicitor that he had not done so "in order to be at liberty to represent persons whose interests may be antagonistic to the paper." Mr. O'Brien gives many interesting details of the methods by which he prepared himself both for the cross-examination of Pigott and the general treatment of the case. On the question of Home Rule, he had always been of opinion that it would come as a natural development of local self-government, of which all parties admitted the necessity. When, however, the issue

became one of practical politics, he threw himself into the struggle with all his energy, and, while busily occupied all day in court, spent his evenings on the platform, addressing public meetings, in speeches rarely reported, in all parts of the country. In later days he sometimes thought that Home Rule, like Catholic Emancipation and local self-government, would come in the end from the Tory party. "Dishing the Whigs," *mutatis mutandis*, is probably not an extinct art.

But, while he was an Irish patriot, he was also in many respects a thorough Englishman. He had no sympathy with the policy of exasperation. He always contended that the English feeling towards Ireland had changed, and that the English, as well as the Irish, could best be "managed by kindness." To the Empire he rendered conspicuous service by the part he took in two successful arbitrations, over the questions of the Behring Sea Fisheries and the Venezuela Boundary, in the former as counsel, in the latter as a member of the tribunal, on which, at Lord Salisbury's request, he took the seat vacated by the death of Herschell. To the service which he then performed his colleague in the representation of England, the present Master of the Rolls, bore emphatic testimony. "I do not believe," he said after his death, "that the public have ever sufficiently realised the great debt they owe to Lord Russell of Killowen for the influence he exercised in bringing about the happy result of that award. I do not believe that there was any other man in this kingdom

who was capable of bringing a weight, a gravity, an indisputable supremacy in discussion and in argument such as he brought to bear on the solution of that question." In order to do justice to these matters, and others which came before him as a law-officer, Russell made himself an authority on international law. The last time the present writer saw him, he was discussing a nice point of jurisdiction, sitting in his own Court, listening to an argument by Mr. Robson, with a dignity, urbanity and competence which could not fail to impress all who saw and heard him.

As a Judge, of course, like others he had his faults. He was apt to be masterful and occasionally inclined to strike too soon. Cases before him were sometimes rather determined than heard. He had a great impatience of petty or speculative actions for libel or slander, which he thought occupied too much of the time of the courts. But he was essentially a strong Judge, with a thorough grip of his work, and his decisions were rarely overruled. On one occasion, when this had happened, he remarked, at a public dinner, in the presence of one of the Lord Justices of Appeal, "I will say here what I never said in another arena, 'Thank God there is a House of Lords.' " In that House he himself did good service. For a short time, before he became Chief Justice, he had been a Lord of Appeal, in succession to Lord Bowen; and subsequently he took a great deal of trouble, in conjunction with Sir Edward Fry, in preparing and introducing a Bill for the repression of the

mischievous system of secret commissions. He did not carry his measure, for which Lord Halsbury displayed no enthusiasm; but, in a modified form, it was subsequently passed by the Upper House, at the instance of his old opponent at the bar and successor as Chief Justice, the present Lord Alverstone.

Lord Russell took a keen interest in the South African question, on which his sentiments were somewhat coloured by his experience of that of Ireland. He was first brought into personal connection with such topics by presiding at the trial at bar of Dr. Jameson and those about him, when he wrested from a somewhat reluctant jury the verdict which he conceived the law and facts required. As to the war, his impressions were very pessimistic. He could not satisfy himself that it was inevitable; and in any case he felt that the Government had never realised the difficulties it involved or the dangers which lay ahead. "No man," he observed in a private conversation shortly before his death, "can see the end of this business. Those Boers love the independence of their country and are fighting for it; and it is that very love of independence—which I am afraid the people here do not realise—that will make all our difficulties later on." He passed away while the struggle was at its height—about a month before the Government declared it over—three years ago; and at present we can only hope that his forebodings may prove to have been unduly sombre. His career at all events affords a striking example of the fact, so

often illustrated in the members of his race, that a strong sentiment of nationality is not incompatible with distinguished service to the Empire. Those who fear that South Africa, in the years to come, will prove another Ireland may at least permit themselves the hope that its patriotic sons, without distinction of origin or race, will possess some of the characteristics and display something of the spirit of Lord Russell of Killowen.

"DAN'L:" A MAN OF PARTS

“DAN’L:” A MAN OF PARTS¹

THIS is an age of specialism and specialists. The sphere of science has grown too wide to be anybody’s *forte*; and no one can be taxed with even a foible for omniscience. Take chemistry for instance; half a century ago one might grasp all that was known about it; now “the exacter labourer” must be content to stir a narrower plot. The most eminent physicist is promptly warned to keep off the grass, should he venture on the plot which the biologist has marked for his own. As to therapeutics, every consultant, with a reputation on the make, proceeds to specialise; should you wend your way to Harley Street, he is apt to diagnose your case as suggesting latent symptoms of the obscure complaint to which he has devoted the labours of a lifetime. “The good all-round man” is regarded as a sort of inferior being, damned with faint praise, alluded to with supercilious indulgence, or disparaged—to quote a famous pleonasm—as a shallow sciolist. In literature and art the tendency is much

¹ “Sir Frank Lockwood: a Biographical Sketch,” by Augustine Birrell. London: 1898.

the same. If B. gained the public ear by writing novels with a Highland *misc-en-scène*, or L. makes a hit with pictures of canals and gondolas, the former must stick to his crofters and gillies, his salmon and grouse, his heather and sunsets, till the end of the chapter, while the latter must continue to aspire to the fame of a modern Canaletto. The good conservative public loves to have it so; should its established favourites break fresh ground, it shakes its head and intimates its preference for the familiar type. There seems to be no place in the modern organism for what used to be known as "the man of parts." Somebody was once speaking of the manifold accomplishments of the late Lord Leighton; he dwelt on his knowledge of architecture and music, his fame as an orator, his distinction as a critic, his skill as a sculptor. "Yes," added the genial Whistler, who happened to be present, "paints too, I believe." In the case of the lawyer, versatility is rather distrusted than admired by his clients. Sir Frank Lockwood was one of the few who possessed it in a marked degree, who made no attempt to conceal it, and to whose success it yet proved no obstacle. To say of a practising barrister that he was a skilful caricaturist, a trained actor, an all-round sportsman, would be an *encomium* scarcely likely to commend him to the average distributor of briefs. Yet no such prejudice interfered with Lockwood's career. With no special advantages of birth or connection, no distinctions won at school or college, he became, while

comparatively a young man, one of the most popular and successful leaders at the common law bar; he held a minor judicial office and sat for some twelve years in Parliament, taking but little part in its proceedings; he enjoyed the unique distinction of being a law-officer during two successive Ministries—for, although Lord Rosebery was blown up (by cordite) in June, 1895, it was not till two months afterwards that Lord Salisbury was able to find a Solicitor-General of his own; admirable in all domestic and social relations, surrounded by troops of friends, he was cut off in the prime of life, while in the full exercise and enjoyment of his many talents. Such a life would seem to afford no special scope for the publication of a biography, the collection and exhibition of works, the erection of votive tablets and the endowment of a permanent memorial; yet all this happened to Lockwood and led to the question being propounded whether ever before people had raised a monument to a man just because they all liked him. Possibly not; but in this age of commemorations and celebrations and centenaries—so often utilised for the advertisement of the nonentities by whom they are organised—it might be easy to find a worse reason.

There are many friends of Lockwood—many who, like the present writer, had only the barest acquaintance with him—who will be glad to possess the album of his sketches which has been issued and the monograph on his life which Mr. Birrell has prepared. Few had better qualifications for undertaking the latter task than its

author—the subject of the embarrassing attentions of the Rev. Tobias Boffin, B.A., (Lond.)—and the execution is as satisfactory as the circumstances would permit. Lockwood was a man whose charm of manner—we have no precise equivalent for the French word *liant*—could not fail to impress all who came into contact with his winning personality ; but such impressions elude description and can seldom be the subject of effective illustration. I remember being introduced to him some years ago, when visiting the Law Courts in the Strand, by another eminent Queen's Counsel and Yorkshire member, who was engaged with him in the conduct of rather an interesting case. I sat with them for some time while the plaintiff, for whom they appeared—an American doctor of rather singular appearance—was being minutely cross-examined by Mr. (now Mr. Justice) Bigham, who was leading for the defendant. I have always regretted that it did not occur to me to beg the favour of a thumb-nail sketch of his client, which would have proved a treasured *souvenir* of the occasion. Such things were often circulated in Court, and sometimes, by special request, handed up to the Bench. Most of the Judges and leading counsel were hit off with a success which, though owing little to *technique*, was often considerable and by which none were more amused than some of the victims themselves. Among his favourite subjects was the late Lord Coleridge ; and it is related that on one occasion that distinguished Judge, when dining with him, and glancing over the

various sketches scattered about the smoking-room, observed that his own physiognomy was conspicuous by its absence. "He little guessed," said Lockwood, "what a busy half-hour I had spent in carefully hiding them all before he came."

Of Lockwood it might be said—perhaps it would be difficult to pay an Englishman a higher compliment—that he possessed all the characteristics of a Yorkshireman of the best type. He had no prestige of aristocratic connection or popular origin. He could neither take pride in a long line of distinguished ancestors nor, like Sugden, when addressing a rowdy mob from the hustings, boast of having "sprung from the dregs of the people, just like yourselves." His family belonged to that common-place, respectable, uninteresting middle-class which in England has supplied so many of the most distinguished members of what the French call *la robe*. But he was born at Doncaster; his father was something of an artist as well as a good man of business; and probably before he could read he had learnt to draw a horse. I think, though Mr. Birrell does not mention the fact, that for some time he practised, as a member of the North-Eastern Circuit, at the local bar at Leeds. Afterwards he became Recorder of Sheffield, and, to his great delight, member for the Minster City of York. He was defeated by a narrow majority at a bye-election in 1883. Elected at the next general election, in 1885, he held the seat till his death. During that troublous period, he was perhaps the only member of his party

who could have done so; and it will be remembered that when he died the vacant seat, after an exceptionally sharp struggle, was won for the Conservatives by Lord Charles Beresford. A few years earlier, he had built himself a house near Scarborough, and acquired a grouse-moor. There he spent his holidays and entertained his friends. A tablet to his memory has been erected in York Minster as well as at Westminster, and it would be difficult to say whether at Westminster or in his native county his memory will be longest or most affectionately cherished.

A barrister in large practice can scarcely keep in full touch with the detail and routine of Parliamentary life and work. He has no time to serve on Committees and his briefs leave him little leisure for the study of blue-books. In political matters Lockwood seemed to distrust his own competence and perhaps scarcely did himself justice. But few members were more popular, and there were many who hoped to see him succeed Peel in the great position which has been so admirably occupied by Mr. Gully. On one occasion he made a most effective speech in the case of Dr. Briggs, an Indian officer, and succeeded in obtaining some redress for a grievance which he had sustained in circumstances of a peculiar kind, which need not now be recalled. "The Doctor," he writes to his daughter, "has sent me a very beautiful cup in recognition of what I did for him in the House of Commons. It looks very handsome on the dining-room table, but the inscription on it

is so flattering that I shall hardly like to put it there: 'In memory of a truly chivalrous action.' Any one reading it would think I had saved an old woman from a watery grave, or stopped a runaway horse, or gone outside an omnibus to oblige a lady, or done something or other great or noble." During the brief period which remained to him after he left office, he spoke somewhat more frequently and always had the ear of the House. Almost his last speech was a powerful appeal in favour of the Prisoners' Evidence Bill, in which he ridiculed the argument that there was no popular demand for the measure. "Did they expect," he asked, "the criminal classes to assemble in their thousands in Hyde Park and demand the right, when next in the dock, to tender their own evidence?" How often, he added, with characteristic humour, had he made a pathetic address to a British jury on behalf of some unfortunate client "whose mouth was shut," while thanking his stars for the state of the law which prevented him from opening it!

One of the most important incidents in his forensic career was his appearance, on behalf of the Irish members, before the Parnell Commission, when he was led by his bosom-friend, "Bob" Reid. He took his share in the work and produced many sketches in which he and Reid appeared respectively, with the suggestion of a comical inversion, in various phases of the parts of the Industrious and the Idle Apprentice. He and Reid "took silk" together and a dinner was once given

to Lockwood by the Eighty Club at which Reid, then Solicitor-General, presided. In the course of a witty response to the toast of his health he referred to certain rumours of an impending dissolution and said a friend had told him he thought there was something in it. "I asked him why he thought so, and he said: 'I was walking down Middle Temple Lane, and, passing the door of the Solicitor-General, I noticed that his name, which has been painted afresh, has only been done in one coat of paint.' Of course I pointed out that my honourable and learned friend came of a prudent race, and that no importance must be attached to that otherwise significant fact." He illustrated the position by the story of a certain prophet, who had created a sensation in a country town by predicting the speedy end of the world. "A local coal merchant told me that the number of persons getting in coal by the sack was phenomenal. It was not because they expected the world was coming to an end, but it would not be well to be left, when it did come, with a stock of coal on hand. It might be used, possibly, against you." In a certain Colony the tale is told of a leading member of the bar, who joined a Ministry supposed to be shaky. On the door of his chambers a notice appeared, "Gone to the office of the Attorney-General." Some malicious person appended the postscript, "Back in six weeks." Prophecy has been described as the most gratuitous form of error; but in that instance I believe that the forecast was substantially justified by the event.

It was when Reid became Attorney-General, in succession to the late Lord Chief Justice, that Lockwood was appointed Solicitor-General by Lord Rosebery. He was fond of telling a story of his ingenuity in effecting an equitable division of their official duties. There were a number of revenue cases—always more or less intricate and technical—in the Crown paper and the Solicitor-General feared he might find himself beyond his depth. "Look here, D.," he said to the Treasury junior, "you understand all about these things, just tell me the drift of them." "Well," was the reply, "the first six cases are all right—we can't lose them; but of the others I think we are bound to lose three, while two are very doubtful." Accordingly, "Mr. Solicitor" benevolently arranged to relieve his over-worked colleague of the first batch and left the remainder in charge of "Mr. Attorney." A few weeks afterwards he inquired how he had fared. "Oh," said Reid, "I had rather a bad time and lost three cases out of five." "Ah," was the reply, "you had no luck; I had six cases and won them all." "I thought it unnecessary to add," he explained, in relating the incident with great gusto, "that in every case I was fortunate enough not to be called upon by the Court."

One great secret, it has been observed, of the successful anecdotist is never to tell a story which makes in his own favour. Lockwood had mastered that principle. It was a mistake to suppose, he once explained, that counsel always had the best of it in

their bouts with hostile witnesses; the tables were sometimes turned. One day he was cross-examining a grazier and asking him at what distance he could distinguish the points of a "beast." In reply he was referred to the distance between the witness-box and the bench reserved for Queen's Counsel. On another occasion, when on Circuit, he, accompanied by some light-hearted juniors, attended a conventicle where a distinguished colleague and active Methodist was announced to preach. "Brother W.," however, combined with his apostolic gifts something of the serpent's guile; and it was generally felt that he had distinctly scored when, at a certain stage of the proceedings, he announced that "Brother Lockwood will now give out and lead the hymn." Once, when riding through the Horse Guards gate, he was, very properly, challenged by the sentry, of whom he inquired, with much dignity, "Are you aware that I am Her Majesty's Counsel?"—and pursued the even tenour of his way. It is asserted that when writing his name in the visitor's book of a Scotch hotel, and noticing that the preceding entry was that of "Lochiel and Mrs. Cameron," he thought that he ought to follow the precedent and, adopting the custom of the country, proceeded to inscribe "26 Lennox Gardens and Mrs. Lockwood." The story reminds one of the high consideration, duly reckoned in the subsequent bill, of which we are told Mr. Labouchere was once the recipient when at a German Bath, much patronised by Serenities and Transparencies,

he described himself, with entire accuracy, as "Henry Labouchere, Elector of Middlesex."

After Lord Salisbury had at length released him from the cares of office—the Treasury, while authorising the payment of his salary to date, politely claiming the fees which he had earned meanwhile by private practice—Lockwood, in company with Lord Russell, visited the United States as the guest of the American Bar Association. It was on this occasion that, in an after-dinner speech, he told the famous story of the alibis, of which, as a specimen of his style, we may perhaps venture to quote the full report:—

"I remember on one occasion defending an innocent man—it has not often fallen to my lot to defend so innocent a man. When I asked the solicitor who instructed me about the case to tell me what the defence was, he said: 'It is an alibi.' Said I: 'No better defence can be proffered to any judge: tell it to me.' He said: 'It was on the 15th of March, as you are aware, that this innocent man is charged with this offence at York.' York is my constituency, and I defend my constituents on reasonable terms. He said: 'On the 15th of March our client, so far from being in York, was in Manchester attending a race meeting.' I said: 'I don't like it. It may offend the Nonconformist conscience.' 'Well,' said he, 'let that pass. He was at Blackpool.' 'Where?' I said. 'Drinking at the bar of a public-house, and I have got the barmaid to prove it.' This I rejected on the ground that the public-house might be a stumbling block to some. 'Well, what do you think of this?' says he. 'Wolverhampton, in a second-hand furniture dealer's shop, buying a coffin for his mother-in-law, and I have got the book to prove it.' I said:

'That is the alibi for our innocent man.' Well, we tried that man and he was convicted, and on the conclusion of the trial I had the opportunity of conversing with the learned judge who tried the case. Said he: 'That was a goodish alibi.' Said I: 'It ought to be, my lord, it was the best of three.'"

Soon after his return from America his health broke down, and an attack of influenza, in the winter of 1897, found him too enfeebled to resist that insidious malady. To the last, his cheerfulness and playful fancy did not desert him. Shortly before the end Lord Halsbury paid him a friendly visit, which gave him great pleasure. "The Chancellor must have felt," he said, looking ruefully at his once burly but then wasted frame, "that I should have made an excellent *puisne* judge." And such, it is sad to think, was the end of "Dan'l." With all his apparent vigour, Lockwood was never really robust. At Cambridge he received the nick-name of "Dan'l Lambert." Though a big man and broadly built, it was not particularly appropriate and was soon abbreviated into "Dan'l," by which *sobriquet* he was always affectionately referred to by many of his old friends. "Even unto the day of his death," says Mr. Birrell, "there were many who never spoke or thought of Lockwood by any other title than 'Dan'l,' and whose hearts would be vexed were they to search his biography in vain for the old, familiar name." It has been held that for a man to have a hypocorism of this kind is a sure sign of his popularity. The secret

in Lockwood's ease lay in his kindly, affectionate, many-sided nature, the charm of his intercourse, the genial, unaffected manner, which was not without a dignity of its own, the humour which never showed a trace of gall, a life which was a model of personal and professional honour, a rectitude which was always manly but never "unctuous."

As already observed, this is an age of specialism. From another point of view it may be described as a melancholy and pessimistic age. The outlook for civilisation in the coming century—threatened by the sinister influences of militarism on the one side and anarchism on the other—is gloomy and perplexed. Faith—even faith in the improvement of mankind—it may be feared is on the wane; the creed of Schopenhauer is more fashionable than that of Comte; and the only shrine still thronged by devotees is that of Plutus. In social intercourse, the race of laughing philosophers is dying out; there is plenty of wit and sarcasm and epigram, but little honest mirth and genuine humour. Even in the time of Sydney Smith that vein in many quarters produced mistrust. Now there are few who venture to be funny; and Lord Northampton wanders about in vain quest of someone or something to make him smile—even at the risk of being overheard by Lord Cross. Writing at the time of Lockwood's death, the *Spectator* referred to "the almost entire disappearance of true humorists from the House of Commons—Mr. Wallace is nearly the last, if

not the last, of the race." I happened to glance at this article just after reading of the tragic blow by which Wallace had been struck down on the scene where he had gained so distinctive a reputation. Just as, on my last visit to the English law-courts, I sat and talked with Lockwood, so it happened that, when last I dined at the House of Commons, I enjoyed a pleasant chat with the late member for Edinburgh. To most of us there comes a stage in life's journey—even before we attain the grand climacteric—when the tidings that this or that friend or acquaintance has reached the goal, whither we all are hastening, recalls Lord Blachford's *hodie tibi*—. The life of Lockwood, though the end seemed premature, and though he was, perhaps in a special degree, amid all his activities, somewhat acutely oppressed by that fear which makes us all our life-time subject to bondage, was doubtless on the whole a singularly happy one ; if, as seems probable, the greatest happiness is attained by those who best succeed in imparting it to others, his share should indeed have been good measure, pressed down and running over.

FROM THE HAGUE TO THE CAPE :
THE PEACE CONFERENCE AND
THE SOUTH AFRICAN WAR

FROM THE HAGUE TO THE CAPE : THE PEACE CONFERENCE AND THE SOUTH AFRICAN WAR

1. "The Peace Conference at the Hague and its bearings on International Law and Policy," by F. W. Holls, D.C.L. New York and London : 1900.

2. "International Law in South Africa," by T. Baty. London : 1900.

"THE outlook for civilisation in the coming century—threatened by the sinister influences of militarism on the one side and anarchism on the other—is gloomy and perplexed." This observation occurs in an article published in South Africa four years ago,¹ at a moment when the Peace Conference at the Hague had just concluded its labours and the war in South Africa was just about to begin. Since these words were written, little has occurred to improve the outlook or to diminish the ascendancy of those sinister influences to which reference was made. For two weary years the whole strength of the British Empire has been

¹ See *supra*, p. 105.

absorbed in the conflict for supremacy in South Africa, a conflict which, whatever its other consequences, will undoubtedly entail a heavy increase in the burden of military expenditure for many years to come. At the same time, with depressed trade and diminished exports, amid the fierce strain of commercial competition, and under a largely augmented burden of public debt, it may well be doubted whether our resources are likely to increase in proportion to the obligations we have undertaken. On the Continent of Europe there is indeed, if that be any consolation, plenty of room for what our German friends call *Schadenfreude*. France, like England, has a shrinking trade and an expanding budget;¹ she has also a stationary population; and her wisest statesmen, like M. Delcassé, admit that her policy in the immediate future should rather be one of consolidation, and development of the resources of her present possessions, than of further expansion abroad. Germany, with the obsession of maintaining an invulnerable defence on two extensive frontiers, has discovered that, in order to become a *Welt-macht*, she must construct a navy in proportion to her ambitions. Italy, staggering under

¹ For 1900 the ordinary budgets of France and the United Kingdom amounted in round numbers to about 145 millions sterling and £140,340,000 respectively; during the same year the "peace footing" expenditure on the army and navy was for Great Britain, 60 millions; for France and Germany, 39 each; and for Russia, 37 millions. In other words that of Great Britain was more than half as much as those of France, Germany and Russia put together. All these figures, when compared with those of say a generation ago, *donnent furieuse-ment à penser*.

the weight of excessive armaments, is corroded with industrial troubles, and the number of strikes, reported during the last twelve months, is computed in centuries. With regard to Austria, it has often been pointed out in how large a measure the peace of Europe depends on the life of its aged Emperor; without the influence of his personality it is difficult to imagine how the Dual Monarchy can be held together, or the forces of unrest in that "storm-centre of Europe," the Balkan Peninsula, restrained from an open conflict in which the whole Continent would too probably be involved. In Spain, where the loss of her colonial trade has nearly ruined the industrial population of Catalonia, the present writer recently had an opportunity of making a comparative study of the working of "martial law;" and even though General Weyler, after his exploits in Cuba, has been appointed "Captain-General" of Madrid, the question is not so much "whether" as "when and where" the impending revolution is most likely to break out. From all one can gather, the condition of things is no better in Russia; and it is easy to understand how cogent, apart from the impulses of humanity, were the economical motives which prompted the Czar to make the proposals which led to the Conference at the Hague. If there is one ray of light on the dawn of the twentieth century, it is probably to be found in the fact that it is synchronous with the ratification by the Powers of the important agreements at which their representatives there arrived.

112 FROM THE HAGUE TO THE CAPE

In order to appreciate the work of the Conference, it is necessary to consider the objects proposed, the parties concerned and the results attained. Much unjustifiable disparagement has been caused by a misunderstanding on the first point. The main purpose in view has been commonly described as disarmament. No such project however was included either in the Czar's original rescript or in the more definite proposals subsequently formulated. The utmost that was suggested was a limitation of armaments, some check on their progressive development and a possible reduction of expenditure on engines of destruction of excessive costliness and ephemeral efficacy. In the late Count Mouravieff's Circular of January, 1899, issued after various *pourparlers* between the leading Powers, all of whom had accepted the invitation to confer, the objects of the Conference were more clearly defined. It was expressly stipulated that "all questions concerning the political relations of States and the order of things established by treaties" were to be excluded from its deliberations. The main points to be considered were (1) means for limiting the progressive increase of armaments and (2) "the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy." The subjects submitted for discussion were then summarised in eight clauses, which formed the basis of the work of the Conference, and to which we shall recur in examining what was actually effected at its sitting.

FROM THE HAGUE TO THE CAPE 113

With regard to the parties concerned, the Conference was remarkable as being international in a wider sense than any previous Convention in the history of the world. Invitations were addressed to all the Governments having representatives at St. Petersburg. While former Congresses were European, there assembled at the Hague representatives both of America and of the far East. It can scarcely be asserted that, among the hundred members who, on May 18, 1899—the birthday of the Czar—took their seats in the Oranje Zaal of the Huis ten Bosch, we could survey mankind from China to Peru; for the Central and South American Republics sent no delegates and, with the exception of that of Mexico, the Commission of the United States was the sole representation of the Western Hemisphere. But China sent an able envoy in Yang Yu, who made a suggestion, with reference to mediation, "that the mediating Power should not charge too high a price for its services in the cause of humanity"—a proviso doubtless based on past experience of European intervention in the affairs of the Celestial Empire and to which subsequent occurrences have given still further point.¹ The representatives of Japan displayed a keen interest

¹ It may well be doubted whether the recent "Boxer" outbreak was not mainly attributable to German aggressiveness and the policy of the "mailled fist;" while, with regard to the monstrous indemnity demanded, especially by France, Germany and Russia, China might set up a heavy counter-claim for the wanton destruction of property, the pillage, plunder and atrocities, which painfully cogent evidence ascribes to the troops of those highly civilised and Christian Powers.

in the discussions and, during a recess, the entire text of the draft Arbitration Treaty is said to have been cabled to Tokio at a cost of some £1,400. There were also delegates from Siam and Persia, who felt obliged to demur to the red cross of the Geneva Convention, Persia intimating its intention to substitute a white flag with a red sun, and Siam "a symbol sacred in the Buddhistic cult and calculated to increase the saving authority of the flag." Besides the South American Republics there were two other significant absentees. No invitations were addressed either to the Pope or to the Dutch Republics in South Africa, owing, as was understood, to objections formulated by Italy and Great Britain respectively. The Queen of Holland, however, wrote a tactful letter to the Pope, requesting his moral support; and this letter, with a sympathetic reply from His Holiness, was, at the request of the Dutch Government, inserted in the report of the proceedings. As Pope Leo was fully justified in observing, both in his own time and in that of his predecessors a solution of international disputes has more than once been found in their submission to the award of the Holy See.

For the authoritative and perspicuous account which he has published of the deliberations at the Hague, all interested in the subject must feel greatly indebted to Judge Holls, who was the secretary of the American Commission and took an active part in the proceedings.¹

¹ He has recently been appointed a representative of Siam on the Permanent Court of Arbitration. [I much regret to have now to record the death of Mr. Holls, which occurred on July 22, 1903.]

He has on the whole been remarkably successful in compiling a narrative, neither too technical and minute, nor merely popular and superficial, of what was certainly a great historical event. The work is all the more valuable since, for obvious reasons, the sittings were held in private and apparently without any official shorthand writer to record the debates. The action of the American delegates—among whom was Captain Mahan, as naval expert—was in many respects important. It seems to have been almost uniformly conciliatory in tendency and it is pleasing to observe that on several contentious points they were able cordially to co-operate with the representatives of Great Britain. While recognising the inevitable modifications produced by recent events, care was taken to commit the United States to nothing inconsistent with their traditional standpoint on the one hand as to purely European complications, on the other as to the applicability of the Monroe doctrine to the territorial questions of the Continent of America. The American delegates, and especially Captain Mahan, also exercised a salutary influence, from a very practical standpoint, in discrediting sundry futile proposals to check the adoption of new inventions, or interfere with the progress of science, as applied to the art of war. With regard to the extension of the rules of the Geneva Conference to maritime warfare, they were careful, warned by experiences like that of the sinking of the *Alabama*, to point out the complications which might

116 FROM THE HAGUE TO THE CAPE

result from ambiguous expressions as to assistance rendered by neutrals, or the subjects of neutral Powers ; while, on the question of the immunity from capture of private property at sea, they made an important proposition, which, though ruled to be outside the purview of the Congress, will probably form one of the subjects for deliberation at a Conference on the rights and duties of neutrals which it was proposed by the Final Act should be held "in the near future." During the discussion of the subject of mediation, an interesting suggestion was made, on his own initiative, by Mr. Holls, and unanimously adopted by the Conference ; while, with reference to international arbitration, special precautions were adopted against the risk of English-speaking diplomatists being prejudiced by their comparative unfamiliarity with the terminology and methods of ratiocination habitually employed by the publicists and diplomatists of continental Europe. On this point we cannot but recall the suggestive observations of Sir Henry Maine, pointing out a defect in our system of professional training which it is to be feared, in the many years which have elapsed since he wrote, but little has been done to remedy :

"Englishmen," he wrote, "will always be more signally at fault than the rest of the world in attempting to gain a clear view of the Law of Nations. They are met at every point by a vein of thought and illustration which their education renders strange to them ; many of the technicalities delude them by consonance with familiar

expressions, while to the meaning of others they have two most insufficient guides in the Latin etymology and the usage of the equivalent term in the non-legal literature of Rome. . . . Nor are these remarks answered by urging that comparative ignorance of International Law is of little consequence so long as the parties to International discussions completely understand each other; or, as it might be put, that Roman Law may be important to the closet-study of the Law of Nations, but is unessential as regards diplomacy. There cannot be a doubt that our success in negotiation is sometimes perceptibly affected by our neglect of Roman Law; for, from this cause, we and the public, or negotiators, of other countries constantly misunderstand each other. It is not rarely that we refuse respect or attention to diplomatic communications, as wide of the point and full of verbiage or conceits, when, in fact, they owe those imaginary imperfections simply to the juristical point of view from which they have been conceived and written. And, on the other hand, state-papers of English origin, which to an Englishman's mind ought, from their strong sense and directness, to carry all before them, will often make but an inconsiderable impression on the recipient from their not falling in with the course of thought which he insensibly pursues when dealing with a question of public law. In truth, the technicalities of Roman Law are as really, though not so visibly, mixed up with questions of diplomacy as are the technicalities of special pleading with points of the English Common law. So long as they cannot be disentangled, English influence suffers obvious disadvantage through the imperfect communion of thought. It is undesirable that there should not be among the English public a sensible fraction which can completely decipher the documents of International transactions, but it is more than undesirable that the incapacity should extend to our statesmen and diplomatists. Whether

Roman Law be useful or not to English lawyers, it is a downright absurdity that, on the theatre of International affairs, England should appear by delegates unequipped with the species of knowledge which furnishes the medium of intellectual communication to the other performers on the scene.”¹

It may be interesting to observe that the Code of Procedure for the International Court of Arbitration was based on the rules adopted for the Venezuela Arbitration which are understood to have been framed by the President, M. de Martens, of Russia, Mr. Justice Brewster, of the United States, and Lord Justice Collins. In several respects they bear a close resemblance to the procedure adopted in cases on appeal before the Judicial Committee of the Privy Council. “Our Commission,” the American delegates report, “was careful to see that in this Code there should be nothing which could put those conversant more especially with British and American Common Law and Equity at a disadvantage.”

Nous sommes, one of the members is alleged to have remarked, the day before the Peace Conference met, *à la veille de la bataille*. The sarcasm pointedly indicated the risks of which the situation undoubtedly was not devoid. Carefully as the programme had been prepared, there were dangers arising from international jealousies, from the circulation of interested or

¹ “Roman Law and Legal Education.” *Cambridge Essays*, 1856 ; “Village Communities,” 3rd ed., pp. 352-4.

exaggerated rumours and from the zeal of injudicious friends. During the debates there were disclosed sharp differences of opinion on many crucial points. General Schwarzhoff, the German military delegate, who recently met with a tragic death at Peking, warmly opposed the Russian project for the limitation of armaments, and denied, as far as Germany was concerned, the existence of economic grounds for its adoption. Equally strong, in the first instance, were the objections of another German representative, Dr. Zorn, to the establishment of a Permanent Court of Arbitration, which had been proposed, on behalf of Great Britain, by Lord Pauncefoot; and this opposition was withdrawn only after an adjournment during which Dr. Zorn, accompanied by Mr. Holls, proceeded to Berlin to discuss the matter with his Government. The delegates from Roumania and other Balkan States more than once displayed "a certain exaggerated racial and national sensitiveness," with reference to the principle of arbitration, which threatened to disturb the harmony of the proceedings. The Court having in the end been constituted, a vigorous controversy arose at a later stage, owing to the objection, emphatically advanced by M. de Martens, to the proposals for allowing, in certain cases, a re-hearing after the award had been pronounced. This difficulty was surmounted with considerable ingenuity, the articles providing that the award should be final unless the parties to the preliminary agreement had reserved a right to a re-hearing on certain carefully

defined conditions.¹ There were other questions—to which the limits of space permit only a bare allusion—such as the use of expanding bullets, the rights of resistance of the inhabitants of invaded territories, and the Russian suggestion that in some cases arbitration should be obligatory, which led to a certain amount of friction; but all these difficulties were successfully surmounted, subject to reservations made in a few instances by representatives of the minority. When so many eminent men contributed to the adjustment of so many intricate questions, it may seem invidious to particularise; but we cannot help observing on how many occasions the *via prima salutis* was indicated by, and the Congress indebted to, the tact and resourcefulness of two of its most distinguished members—M. Bourgeois, a former Prime Minister of France, and the veteran diplomatist, Count Nigra, whom Italy was fortunate in securing as her principal representative at the Hague.

Let us now proceed briefly to explain the *modus operandi* of the Conference and the results actually achieved. Count Mouravieff's Circular, as already mentioned, contained various suggestions, which were embodied in eight clauses. Three Committees were appointed. Clauses 1 to 4 were considered by the first, clauses 5 to 7 by the second, while the Third Committee—the “Comité d'Examen,” to which were referred the proposals for “Good Offices, Mediation, International

¹ Articles 54 and 55; see Holls, p. 286.

Commissions of Inquiry and Arbitration," embraced in clause 8—soon became the real centre of interest and accomplished a task for which the Congress will be permanently and gratefully remembered.

As to the work of the first Committee, the difficulties in the way of limitations of armaments, or of military and naval expenditure, were soon found to be for the present practically insuperable. Different nations arrange their budgets for different periods ; the numbers of the active forces must largely depend on the conditions of enrolment ; questions of territorial situation, and relative facilities for rapid concentration, present another obstacle to a common basis of agreement ; while the definition of colonial troops, who were to be excluded from the proposed restrictions, is also surrounded by the gravest difficulties. The Committee reported that "a more profound study of the question by the Governments themselves would be desirable;" while, on the motion of M. Bourgeois, it was unanimously resolved that "a limitation of the military charges which now weigh upon the world is greatly to be desired in the interests of the material and moral welfare of humanity."

With regard to the other clauses, referred to the first Committee, on the question of "the humanising of war," after discussion by military and naval sub-committees, most of the suggestions brought forward were dismissed as impracticable. A proposal to prohibit the use of expanding bullets was carried

against the opposition of Great Britain and the United States. The reasons for that opposition are fully explained by Mr. Holls; we can here only observe that they were weighty and not inconsistent with a perfectly humane attitude on the part of the opposing powers. Captain Crozier, the American military expert, proposed as an amendment that "the use of bullets inflicting wounds of useless cruelty, such as explosive bullets, and in general every kind of bullets which exceeds the limit necessary for placing a man *hors de combat*, should be forbidden." Contrary to what we are accustomed to regard as the rule in deliberative assemblies,¹ this amendment was never put to the Committee, and the original proposal was carried by 20 votes to 2. An attempt to obtain a re-consideration of the subject, at a subsequent sitting of the full Conference, was also unsuccessful. "There can be little doubt," says Mr. Holls, "that history will vindicate the position taken by the United States and

¹ "It is a significant and characteristic fact that a proposition of parliamentary law, which is as familiar as the alphabet to every member of the various school-boy societies in America, and the justice of which is self-evident, namely, that an amendment or a substitute must be voted on before the original proposition is put to a vote, was not only unfamiliar to most of the European members of the Peace Conference, but was seriously disputed, and the contrary rule adopted by an overwhelming majority. The result was that the American amendment was never put to a vote, and although in this particular instance there is every reason to believe that the amendment would have been rejected, even if the fundamental principles of parliamentary law and justice had been observed, the incident is highly instructive, in that it proves the absolute necessity, in future assemblies of this character, of at least a minimum in the way of ordinary rules of procedure" (Holls, pp. 113, 114).

Great Britain on this subject. No attempt was made to meet their arguments on the merits, and the best that can be hoped for is that the decision of the Conference may not eventually defeat its own object." It is however an interesting fact that the British War Office recalled from South Africa millions of rounds of "No. IV." cartridges, on the ground, as explicitly stated by Mr. Brodrick, that they were within the prohibition of the Hague Conference.¹ At the same time, it may be observed that, in view of the attitude of Great Britain in objecting both to the representation of the Dutch Republics at the Hague and to the prohibition of these bullets by the Conference, it is difficult to understand how objections can legitimately be taken to the employment by the Boers of such projectiles, which it seems probable they in some cases captured from our own troops.²

Among other suggested *temperamenta*, affecting warfare on land, a declaration was unanimously adopted prohibiting, for a period of five years, "the launching of projectiles and explosives from balloons or by other similar new methods." "The action taken," we read, "was for humanitarian reasons alone, and was founded

¹ It was apparently the necessity of hurriedly replacing the ammunition thus withdrawn which left England for the nonce with just sufficient in reserve—in the event, say, of an invasion by General Mercier—to serve out to a corporal's guard.

² Certain prisoners are reported to have been convicted in the Cape Colony, under martial law, of using expanding bullets; if there is any truth in the report, the matter seems to be one for investigation.

upon the opinion that balloons, as they now exist, form so uncertain a means of injury, that they cannot be used with accuracy. The persons or objects injured by throwing explosives may be entirely disconnected from the conflict, and such that their injury or destruction would be of no practical advantage to the party making use of the machines. The limitation of the prohibition to five years' duration preserves liberty of action under such changed circumstances as may be produced by the progress of invention." As to naval warfare, it was resolved to condemn "the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases." From this the United States delegates dissented, for reasons effectively expressed by Captain Mahan, who failed to appreciate the greater inhumanity of asphyxiating an enemy by the agency of gas, than that involved in attaining a similar result by the agency of water. It may be added that a majority of delegates, on instructions from their Governments, were willing to agree to a proposal not to construct war-ships armed with rams, provided it was unanimously adopted; this however was frustrated by the opposition of Germany, Austria, Denmark and Sweden.

Proceeding to the work of the second Committee, an important convention was framed for the adaptation to maritime warfare of the principles of the Geneva Convention, while a hope was expressed that steps might shortly be taken for the convening of a special

Conference having for its object the revision, by the light of subsequent experience, of that Convention itself. To this end certain preliminary steps have already been taken by the Government of Switzerland. The other important subject dealt with by this Committee was a revision of the Declaration, concerning the laws and customs of war, prepared by the Brussels Conference of 1874, which had never been ratified by the Powers. The Committee succeeded in elaborating a Convention on the subject which, like that with regard to naval warfare, has been subsequently adopted, with practical unanimity—the only exceptions being China and Switzerland—by all the Powers represented at the Conference. This convention is of considerable interest and will entail certain modifications in the regulations, such as the military Code of the United States, so frequently referred to in discussions relating to the South African war, which have hitherto been adopted by various nations. There was a good deal of argument, interesting in the light of recent events, as to what constitutes a belligerent and as to the rights of resistance of the population of an invaded territory when not organised as a belligerent force. In dealing with this question, it may be observed that, while Germany and Russia were inclined to take the stricter, the military representative of Great Britain, Sir John Ardagh, was the exponent of the more liberal view. Sir John suggested that “nothing in this chapter shall be construed as diminishing or denying the right

belonging to the people of an invaded country to fulfil their duty of opposing the invaders by the most energetic patriotic resistance and by all permitted means." The Swiss representative proposed to add that "reprisals are prohibited against any population which has openly taken arms to resist the invasion of its territory." General Schwarzhoff, on the other hand, supported by Colonel Gilinsky, of Russia, "protested against the proposition, which in his opinion would wipe out the distinction between a popular uprising or *levée en masse* in a country which was in danger of invasion, and a similar uprising in a district which had already been invaded by a hostile army." "Much," he added, "was said on the subject of humanity, but in his opinion it was time to remember that soldiers too were human beings, and that tired and exhausted soldiers approaching their quarters after heavy combats and long marches had a right to feel sure that apparently peaceable inhabitants should not suddenly prove to be wild and merciless enemies." In the end Sir John Ardagh withdrew his proposal and an article was unanimously adopted providing that "the population of a territory which has not been occupied, who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organise themselves in accordance with Article 1, shall be regarded as belligerent, if they respect the laws and customs of war," together with a "rider," proposed by M. de Martens, declaring "that in cases not provided for in the Articles

of this date, populations and belligerents remain under the safeguards and government of the principles of international law, resulting from the customs established between civilised nations, the laws of humanity, and the demands of the public conscience."

The following articles (4-20)—regulating the treatment of prisoners of war—are of much present and topical interest, but we cannot even attempt to summarise them here. They will be found set out at pp. 145-150 of the work under notice. Another important article (23) enumerates various "special prohibitions" in the following terms :—

Besides the prohibitions provided by special Conventions, it is especially prohibited :—

- (a) To employ poison or poisoned arms ;
- (b) To treacherously kill or wound individuals belonging to the hostile nation or army ;
- (c) To kill or wound any enemy who, having laid down arms, or having no longer any means of defence, has surrendered at discretion ;
- (d) To declare that no quarter will be given ;
- (e) To employ arms, projectiles, or material of a nature to cause superfluous injury ;
- (f) To make improper use of a flag of truce, the national flag, or military ensigns, and the enemy's uniform, as well as the distinctive badges of the Geneva Convention ;
- (g) To destroy or seize the enemy's property,

unless such destruction or seizure be imperatively demanded by the necessities of war.

It is a melancholy reflection that there is probably not one of the acts, here solemnly reprobated as offences against humanity, which, during the prolonged conflict between civilised belligerents in South Africa, has not been imputed, in some cases officially, in others by assertions in the public press, to one or the other, and in several instances to both, of the combatants engaged. The experience, however, is one of constant recurrence in similar circumstances. In time of war the elemental passions are unchained; and in these days they are stimulated by all the incentives of sensational journalism and the reckless inventions of a "yellow" press. Hatred, malice and uncharitableness abound, and human nature shows its ugliest side. That some of these rules have on some occasions been disregarded, and that not by one side alone, has been too clearly demonstrated; and, in the whole course of the war, probably nothing has been more deplorable than the wide construction which, with reference to clause (g), it has apparently been thought legitimate to place on the phrase "the necessities of war,"¹ and all the misery which that construction has entailed. But in many

¹ "The plea of necessity, even when justified, has a dangerous tendency to corrupt and degrade those who urge it; and when it has sapped the foundations of one fence, no other fence into the construction of which it has been introduced can be greatly relied on." These are the concluding words of Mr. Westlake's "Chapters on the Principles of International Law," published at Cambridge in 1894.

cases apparent irregularities have proved susceptible of an innocent explanation ; and it is satisfactory to note that, for one misdeed which may be regarded as established, dozens have been effectually refuted. There has indeed been a carnival of mendacity ; but on the whole there seems to be among fair-minded people—for of such there is still a “ remnant ”—a consensus of opinion that acts of intentional inhumanity or deliberate perfidy have been few and far between. In the case of a struggle between two races for whose ultimate solidarity we must all aspire, the reflection is one from which we may derive some measure of consolation and possibly some gleam of hope.

Another matter dealt with in this Convention, which has its bearing on the South African situation, is that of the right of passage through neutral territory. Article 59 appears to lay down that such passage is authorised only in the case of “ wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither combatants nor war material.” In the South African war, Portugal allowed a British force to land at one of its ports and thence proceed to the seat of hostilities. Was this a breach of neutrality on her part ? The question is ably discussed in Mr. Baty’s little book on “ International Law in South Africa.” Great Britain, as he points out, enjoys a certain right of passage over Portuguese territory in South East Africa under the Treaty of 1891 ; but it seems very doubtful whether this right covers

the passage of troops, by the route actually adopted, in time of war. Apart however from treaty, it may be contended that a neutral State commits no offence by allowing a belligerent to cross its territory, provided it is willing to extend similar facilities to the other combatant. The point is one on which, as Mr. Baty shows, there exists a great difference of opinion among the publicists; and it is to be hoped that it will be authoritatively determined by the proposed future conference on neutral rights and duties. The position and liabilities of neutralised States, such as Belgium and Switzerland, and the course pursued by them during the Franco-German war, are obviously far from conclusive as to the general question in the case of Powers enjoying the complete status of both sovereignty and independence.

Among the proposals submitted to the Second Committee was that of the United States with reference to private property on the high seas. As already mentioned, the American representatives took the opportunity, in accordance with their traditional policy, of advocating an extension of the principles of the Paris Declaration and the adoption of the rule that private property, at sea as well as by land, should be exempt from seizure and confiscation. Before this proposition again comes up for international discussion, it would be well for British statesmen to try to make up their minds as to the attitude on the subject at large which it is desirable that England should assume. It can

scarcely be doubted that, as the Power with the greatest mercantile marine, her permanent interest is in favour of limiting as far as possible the interference of warlike operations with sea-borne trade. The criticism has been often made that, whatever rule the nations may agree to in time of peace, a great Power, when engaged in a serious struggle, will probably employ the means most conducive to a successful issue. Those who take this cynical view appear to attach inadequate weight to the obligation of agreements, the force of international opinion and the growing tendency to regard war as a political *inconvenance*, the disturbing influence of which on the ordinary rights of neutrals must be rigidly controlled and confined to the narrowest limits. It may be observed that, however widely extended its conventional immunity, maritime commerce will still remain to some extent liable to interference, during the existence of a war, by the reservation of the right to search for contraband. This right however will itself in the future probably be more strictly limited, in the spirit of the substantial concessions made to Germany by Great Britain during the South African war.¹ Here there arises a point of great importance and difficulty, with regard to the evidence of destination. Can goods be confiscated as contraband on sufficient proof that they are intended for the service of

¹ We agreed to waive the right of search except on grounds of strong suspicion, and in no case to detain vessels for that purpose either north of Aden or at any greater distance from South African ports.

the enemy, or is it necessary that the vessel conveying them should be bound to a hostile port or at all events that there should be a through bill of lading to the enemy's country? The question forms the subject of an interesting discussion in Mr. Baty's book, in which he argues in favour of the latter view. This, as he shows, is in accordance with the traditional policy of Great Britain, and the decisions of Lord Stowell, pronounced in some cases in which—as in that of the *Imina*, bound for Emden, on the German bank of the estuary of the Ems, at a time when we were at war with Holland—there was the strongest presumption of a hostile destination of the cargo.

It is obvious that this test operates in favour of neutral commerce, while the other view extends the rights of belligerents. On the occasion of the war with the Transvaal, which had no port of its own but a neutral port almost on its border, there were very cogent reasons for Great Britain to take a broad view of its rights of detention and search. Such a view, as Mr. Baty admits, is supported by the modern practice of Prize Courts in America, France and Italy, and is not without support from German jurists, as was pointed out by Lord Salisbury in his correspondence with Count Bülow. The practical difficulties which arose with regard to Delagoa Bay illustrated Lord Rosmead's acute observation that in many respects England, in the event of a struggle with the Transvaal, would find herself in a better position if the Republic

possessed a port of her own. It may however be observed that the general trend of British decisions and opinions has on the whole been in favour of the strictest limitation of the right of seizure, and that no goods, conveyed by a neutral ship and destined for Delagoa Bay, were actually condemned by any Court of Prize.¹ As Great Britain, it is to be hoped, in future wars will as a rule find herself in the position of a neutral Power, she may well desire that the tendency of international legislation should be in this direction. In that event, considering the constantly increasing facilities for land transit, it seems not impossible that the right of search on the high seas for contraband of war may ultimately be abandoned, and the attempt to cripple an enemy by stopping his imports practically confined to the method of blockade. To such a solution the insular position of Great Britain, and the desire to damage her trade, and cut off her supplies, on the high seas, may present a formidable obstacle. Could this be surmounted by general consent, its adoption would undoubtedly prove in many respects a great amelioration and vastly diminish the prejudice caused by war

¹ The only condemnation of cargo obtained during the war was in the case of the *Mashona*, heard by the Prize Court at Capetown. This was not a case of contraband but of British subjects trading with the enemy and depended on principles of a different character. As Mr. Baty observes, "the rules which a municipal court sees fit to impose upon its own vessels throw no light on those which are required to be observed by the ships of independent nations. When the Court of Admiralty was condemning British goods bound for Emden, on the ground of trading with the enemy, it released the *Imina*, which was carrying warlike stores to the very same port" (j. p. 21, 25).

to the commercial operations of the subjects of neutral powers.

Our limited space precludes a detailed analysis or discussion of the work of the Comité d' Examen, which led to the most valuable product of the whole Conference in the preparation of the "Convention for the peaceful adjustment of international differences." This Convention has since been ratified by all the Powers represented at the Hague. The methods of adjustment prescribed by the Convention are (1) Good Offices and Mediation, (2) International Commissions of Inquiry and (3) International Arbitration. We must here confine ourselves to a very brief reference to each.

There is little practical difference between good offices and mediation. The former—as for instance the offer made by Great Britain in 1870 on the eve of the Franco-German war—being more general and less definite, may often lead to the latter. Mediation must of course be clearly distinguished from intervention, which frequently assumes a hostile character, while the Convention expressly provided, on the suggestion of Count Nigra, that the offer of mediation, "in the case of a serious disagreement or conflict, before an appeal to arms, or even during the course of hostilities," shall never be regarded as an unfriendly act. It is somewhat regrettable, as a matter of formal correctness, that this distinction was not more carefully observed in the communication addressed by the American President to the British Government, in response to

the appeal of the South African Republics, in March of 1900. "Mediation," as Mr. Holls points out, "is not arbitration nor can it be in the nature of an intervention backed up by any physical force whatever." It was, we may here add, on the suggestion of Mr. Holls, that an important article was unanimously adopted and added to the Convention in the following terms:—

"Article 8. The Signatory Powers are agreed in recommending the application, when circumstances allow, of special mediation in the following form:—

"In case of a serious difference endangering peace, the States at variance shall each choose a Power to whom they intrust the mission of entering into direct communication with the Power chosen by the other side, with the object of preventing the rupture of pacific relations. During the period of this mandate, the term of which, unless otherwise stipulated, cannot exceed thirty days, the States in conflict shall cease from all direct communication on the subject of the dispute, which shall be regarded as having been referred exclusively to the mediating Powers, who shall use their best efforts to settle the controversy. In case of a definite rupture of pacific relations these Powers remain charged with the joint duty of taking advantage of every opportunity to restore peace."

Just as in the relations of individuals, private feuds and the *lex talionis* have been gradually superseded by public justice, it may be hoped that a similar process is in course of evolution with regard to international disputes. There is however a class of cases in which, till recently in England and at the present day on the

Continent of Europe, public opinion regards an appeal to the tribunals as affording no adequate redress for affronts to personal honour. In such matters recourse is had to the duel; but the institution of the duel has itself in practice been beneficially influenced, and its consequences mitigated, by the system of choosing seconds, in whose hands the principals unreservedly place themselves, and by whose decisions they are bound to abide. It is for the seconds to determine whether a meeting is inevitable and, if so, under what conditions and restrictions the encounter shall be allowed.¹ It will be interesting to observe whether in any future case the provisions of this article are applied and, if so, with what result. The interval of time during which the parties are to leave the matter in the hands of their seconds affords an opportunity for reflection which may often prove of the greatest value; should hostilities nevertheless ensue, the seconds will enjoy a special status, involving a moral duty to lose no opportunity of promoting a speedy and honourable conclusion.

¹ In the author's interesting disquisition on the history of the duel, there are two misprints. In the quotation from Zallinger on p. 194 *persequitur* should be *persequatur* and *eam* should be *eum*. Other printer's errors, which may be noted for correction in a second edition, are to be found on p. 25, where the dates under new and old style * should be transposed; and on p. 330, where "impossibility" should be "possibility." On p. 482 for "Art. 3" read "Art. 8;" on p. 516 for "exactions" read "empire;" while on p. 524 the reference in the Report of the American Commission to Articles 20-29 is inadvertently omitted.

* To ignore this distinction sometimes produces awkward complications, as in the leading case of *Tristram of Blent*.

Another method which may often be found useful for the peaceful adjustment of "differences involving neither honour nor vital interests," is that of International Commissions of Inquiry. In many cases it is of the first importance to ascertain the real facts, obscured as they often are by misleading telegrams, by excited declamation in the press or angry discussion in the Legislature. The scene of the dispute is very probably remote; it is perhaps a question of a boundary line in Central America, a railway-siding in China, or a fishing-bank in Newfoundland. While a Commission is making an impartial inquiry, time is allowed for passions to cool, for popular attention to be diverted elsewhere and for the application of diplomatic skill and patience to the subject of controversy. Such Commissions can, under the Convention, be constituted with less formality than is involved in an agreement for arbitration; and their reports are to be confined to a statement of facts, leaving the Powers concerned in perfect freedom as to the effect, if any, to be given to such statement. Their usefulness will therefore entirely depend on their intrinsic merits. They "shall in no way have the character of an arbitral award;" and in many cases, where arbitration or even mediation would be impracticable, they may exercise an influence favourable to the adjustment of the matters in dispute.

Lastly, we have the great fact that, in circumstances where good offices and mediation are ineffective or unsuitable, and where the difference is not of such a

character as to be capable of settlement by a Commission of Inquiry—in cases, for instance, of the construction or application of treaties or conventions—in future it will always be open to the parties to refer their controversies to the Permanent Court of International Arbitration, the creation of which, after many difficulties and much debate, must be regarded as the main achievement of the Congress at the Hague. This can be effected either by an agreement *pro re nata* or by one for the submission of future differences, such as has been made in the case of the International Postal Union, and also by treaties between various Powers—for instance between Holland and Portugal—and such as was attempted by the treaty of 1896 between Great Britain and the United States, which unfortunately was not ratified by the American Senate. A proposal, submitted by Russia, that in certain cases arbitration should be compulsory was, at the instance of Germany, rejected; but a tribunal was established to which all the signatories can have recourse on every occasion which they may deem appropriate for such procedure. Schemes for the establishment of a permanent Court were brought forward by Great Britain, by the United States, and by Russia. It was decided to adopt the English proposals as the basis of discussion and they were subsequently accepted in substance and embodied in a series of articles, which however included many useful features borrowed from the other plans. It was provided that the Court should have a permanent

Bureau at the Hague, and an administrative council, consisting of the diplomatic representatives of the signatory Powers accredited to the Court of Holland, presided over by the Netherlands Ministry for Foreign Affairs. The Court is itself to sit there, unless on any special occasion it is otherwise agreed; and each of the Powers was invited to appoint not more than four members of the Court, from among whom the arbitrators in each case have to be selected in the manner prescribed by Article 24.¹ The following important provision was added, on the suggestion of M. Bourgeois, who presided, with signal ability and tact, at the deliberations of the Comité d' Examen :—

“Article 27. The Signatory Powers consider it their duty, in case a serious dispute threatens to break out between two or more of them, to remind these latter that the permanent court of arbitration is open to them. Consequently they declare that the fact of reminding the parties in controversy of the provisions of the present Convention, and the advice given to them, in the higher interests of peace, to have recourse to the permanent court, can only be considered as an exercise of good offices.”

While this was unanimously adopted, the representatives of the United States thought it necessary to make the following reservation :—

“Nothing contained in this Convention shall be so construed as to require the United States of America to depart from its traditional policy of not entering upon,

¹ For a list of the present members, see Appendix, pp. 145-147

interfering with, or entangling itself in the political questions or internal administration of any foreign State, nor shall anything contained in the said Convention be so construed as to require the relinquishment, by the United States of America, of its traditional attitude toward purely American questions."

The short speech in which M. Bourgeois summed up the discussion, of which a report will be found at pp. 273-5, is well worth perusal. It ended, we are told, "with an outburst of eloquence which electrified the Conference and led to the withdrawal of all hostile motions." The remaining Articles of the Convention (30 to 61) embrace a complete code of arbitral procedure, followed by provisions for ratification, adherence and withdrawal. For the details we must refer the reader to Mr. Holls's book (pp. 276-305) while some later information will be found in the Appendix to this article. It would be superfluous to emphasise the significance of the task which was thus accomplished and of which we have perforce confined ourselves to the barest record. There is much weight in a remark contained in the General Report of the American Commissioners. "It was felt," they observe, "that a thorough provision for arbitration and its cognate subjects is the logical precursor of the limitation of standing armies and budgets, and that the true logical order is first arbitration and then disarmament."

There was much that was appropriate in the selection of the capital of the Netherlands for the meeting of the

Peace Conference and the seat of the permanent Court of Arbitration. It was not unfitting that the narrative of its proceedings should be prepared and published by an American jurist. There are deep sources of traditional sympathy between the people of Holland and the citizens of the United States. It was the Dutch who laid the foundations of what is now New York but was originally New Amsterdam; it was from the Haven of Delft, not far from the Hague, that the *Mayflower* sailed, bearing on their westward journey those Pilgrim Fathers who in a New England were to establish and enjoy that civil and religious freedom they were denied at home; while the heroic struggle of the Netherlands against the tyranny of Spain has found its most eloquent record in the pen of an American diplomatist. On the 123rd anniversary of the Declaration of American Independence, the representatives of the nations, assembled at the Hague, were invited by the Commissioners of America to an interesting commemoration and a touching ceremony. In the Grote Kerk of the old town of Delft is erected the tomb of William the Silent, who led the Dutch revolt against the cruelties of Alva and the bigotry of Philip, and founded the Commonwealth of the United Netherlands. Hard by there rests all that was mortal of that other glory of the Dutch people, the founder, as he may well be called, of the modern science of the law of nations. Hugo Grotius was born at Delft the year after William was assassinated in the same town; he also became a victim of

the theological rancour of the age and, while yet in his early manhood, was sentenced, as a leader of the Arminians, to imprisonment for life. Escaping to France, he there resumed his youthful studies and published his great work, the *De iure belli et pacis*, in which, speaking of arbitration and mediation, he says, *maxime autem christiani reges et civitates tenentur hanc inire viam ad arma vitanda.*

On his tomb, on the 4th of July, 1899, a wreath was laid, "in reverence and gratitude from the United States of America." Eloquent speeches were delivered by the American delegates and the Dutch Minister of Foreign Affairs, by the President of the Institute of International Law, himself a Dutchman, and by the representative of Sweden, in the service of which State Grotius, an exile from his fatherland, spent the closing years of his life. Mr. White, the eminent American Ambassador, declared that "of all works not claiming divine inspiration, that book, written by a man proscribed and hated both for his politics and his religion, has proved the greatest blessing to humanity. More than any other it has prevented unmerited suffering, misery and sorrow; more than any other, it has ennobled the military profession; more than any other, it has promoted the blessings of peace and diminished the horrors of war. . . . From nations now civilised, but which Grotius knew only as barbarous; from nations which in his time were yet unborn; from every land where there are men who admire genius, who reverence virtue,

who respect patriotism, who are grateful to those who have given their lives to toil, hardship, disappointment and sacrifice, for humanity—from all these come thanks and greetings heartily mingled with our own."

The commemoration was an appropriate episode of a great event. Discouraging as was the reception by his contemporaries of the work of Grotius, we know how potent and beneficent has been its influence on the subsequent history of civilised mankind. A similar disillusion may be the lot of those who expected great and immediate results to spring, as at the waving of some magic wand, from the rescript of the Czar; but the good seed has been sown and, sooner or later, we may hope to reap the harvest. In the case of those who, as the nineteenth century of the Christian era drew to its close, assembled at the Hague to labour in the sacred cause of humanity, as in that of their great predecessor, whose memory they honoured in the "New Church" of Delft, may we predicate the beatitude ascribed to the feet of those who preach the gospel of peace and bring glad tidings of good things.

APPENDIX

The writer of this article is indebted to Mr. Westlake, K.C., one of the English members of the Permanent Court of Arbitration, for the latest particulars

with reference to (A) the adoption and ratification by the various signatory Powers of the Conventions and Declarations annexed to the Final Act of the Conference, and (B) the composition of the Permanent Court. This information was obtained in July, 1901, as to (A) from the British Foreign Office and as to (B) from the Bureau at the Hague.

(A) The Final Act, besides formulating six "wishes," embraced three Conventions and three Declarations, viz.:—

- (1) Convention for the peaceful adjustment of international differences.
- (2) Convention regarding the laws and customs of war by land.
- (3) Convention for the adaptation to maritime warfare of the principles of the Geneva Convention.
- (4) Declaration prohibiting the launching of projectiles and explosives from balloons or by other similar new methods.
- (5) Declaration prohibiting the use of projectiles for the diffusion of asphyxiating or deleterious gases.
- (6) Declaration prohibiting the use of expanding bullets.

The signatory Powers were:—

Germany, United States of America, Austria-Hungary, Belgium, Bulgaria, China, Denmark, Spain, France, Great Britain, Greece, Italy, Japan, Luxemburg, Mexico, Montenegro, Netherlands, Persia, Portugal, Roumania, Russia, Servia, Siam, Sweden and Norway, Switzerland, and Turkey.

Of these Powers, the information supplied, possibly through some inadvertence, does not mention Greece. Luxemburg has signed all the six documents specified above but has ratified none of them ; China and Turkey have signed them all but have ratified only 1.

With the above exceptions :—

(1) has been signed and ratified by all the signatories, with a reservation by the United States contained in the English Bluebook at p. 255 (see above, p. 139) ; while Roumania and Servia have made certain reservations as to Articles 16, 17 and 19, as recorded in the minutes of the sitting of July 20, 1899 (see Holls, pp. 221, 226).

(2) has been neither signed nor ratified by Switzerland ; it has been signed but not ratified by the United States, Sweden and Norway ; and it has been both signed and ratified by all the others.

(3) has been signed and ratified by all.

(4) has been signed and ratified by all but Great Britain.

(5) has been signed and ratified by all but Great Britain and the United States.

(6) has been signed and ratified by all but Great Britain, the United States and Portugal.

(B) We have received a list of members of the Permanent Court of Arbitration, signed by the Secretary-General, and dated at the Hague, July 15, 1901, from which it appears that at that date there had been appointed 65 members, representing 19 Powers. The following is an abridgement of the French original, the names of the Powers being arranged in the order of the French alphabet :

146 FROM THE HAGUE TO THE CAPE

GERMANY :

MM. BINGNER (President of the Imperial Court at Leipzig), DE FRANTZIUS, DE MARTITZ and DE BAR.

AUSTRIA-HUNGARY :

COUNT SCHONBORN (President of the Imperial-Royal Court of Administrative Justice), M. DE SZILAGYI (*died* July 31, 1901) COUNT APPONYI and M. LAMMASCH.

BELGIUM :

M. BEERNAERT, Baron LAMBERMONT, MM. DESCAMPS and ROLIN-JACQUEMYS (*deceased*).

DENMARK :

M. MATZEN (President of the "Landsting").

SPAIN :

DUC DE TETUAN, Marquis DE POZO RUBIO, Don B. OLIVER, Don M. TORRES CAMPOS.

UNITED STATES :

Mr. HARRISON (ex-President, *deceased*), Chief Justice FULLER, Mr. GRIGGS (Attorney General), Mr. Justice GRAY.

MEXICO :

DONS ASPIRON, GAMBOA, RAIGOSA and CHAVERO.

FRANCE :

MM. BOURGEOIS, DE LABOULAYE, D'ESTOURNELLES DE CONSTANT and RENAULT.

GREAT BRITAIN :

LORD PAUNCEFOTE (Ambassador at Washington),¹ Sir E. MALET, Sir E. FRY and Mr. WESTLAKE, K.C.

ITALY :

COUNT NIGRA (Ambassador at Vienna), Signor GUARNASCHELLI (President of the Court of Appeal at Rome), Count TORNIELLI (Ambassador at Paris) and Signor ZANARDELLI (Prime Minister).

JAPAN :

MM. MOTONO and DENISON.

¹ *Deceased* : Sir JOHN ARDAGH appointed.

NETHERLANDS :

MM. A. SER, CONINCK-LIEFSTING (President of the Court of Appeal), DE SAVORNIN LOHMAN and RUYSS DE BEERENEROUCK.

PORTUGAL :

COMTE DE MACEDO (Minister at Madrid), M. COELHO DE SA BRANDAO (President of the High Court), MM. ROLIM DE MOURA (Minister at St. Peter-burg) and GOMES DA COSTA (Judge of the High Court).

ROUMANIA :

MM. ROSETTI, KALINDERO, STATESCO and LAHOVARI.

RUSSIA :

MM. MOURAVIEV (Minister of Justice), POBEDONOSTZEW, FRISCH and DE MARTENS.

SERBIA :

MM. PAOLOVITCH, GERSCHITCH, MILOVANOVITCH and VISNITCH.

SIAM :

M. ROLIN-JACQUEMYS (also appointed by Belgium)¹ and Mr. F. W. HOLLS (Delegate of the United States at the Peace Conference).¹

SWEDEN AND NORWAY :

MM. D'OLIVECRONA and GRAM.

SWITZERLAND :

MM. LARDY (Minister at Paris, and President of the "Institut de droit international"), HILTY and ROTT (President of the Federal Tribunal in 1899 and 1900).

¹ *Deutscher*. (Cf. p. 111.)

THE STATE TRIALS

THE STATE TRIALS

I

1. "A Complete Collection of State Trials, with General Index." 34 vols. London: Longmans and others. 1809-1828.

2. "Modern State Trials." By W. C. Townsend, Q.C. 2 vols. London: Longmans. 1850.

3. "Narrative of State Trials in the Nineteenth Century, 1801-30." By G. L. Browne. 2 vols. London: Sampson Low. 1882.

4. "History of the Criminal Law of England." By Sir James Fitzjames Stephen. 3 vols. London: Macmillan. 1883.

5. "Reports of the State Trials. New Series, 1820-58." 8 vols. London: Eyre and Spottiswoode. 1888-98.

6. "Examination of the Trials for Sedition in Scotland." By Lord Cockburn. 2 vols. Edinburgh: Douglas. 1888.

7. "Famous Trials of the Century." By J. B. Atlay. London: Richards. 1889.

8. "Historic Parallels to l'Affaire Dreyfus." By E. Sanderson. London: Hutchinson. 1900.

9. "State Trials, Political and Social," edited by H. L. Stephen. 4 vols. London: Duckworth. 1899-1902.

DURING the latter half of the nineteenth century, for a period of nearly fifty years, the relations of Great

Britain with other civilised States were those of uninterrupted peace. During the last three years, questions have arisen for the decision of the tribunals, principally in South Africa, of which no living member of any British Court of Justice had any previous practical experience. There have of course occurred, within comparatively recent times, prosecutions for high treason, such as the Fenian trials in Ireland, and questions as to the operation and effects of martial law, such as were raised on the prosecution of Governor Eyre; but these were matters concerned with rebellion and conspiracies against the State, unaffected by the concurrence of external hostilities, or the consideration of the rights and duties of a belligerent power. The simultaneity of war and rebellion has produced many complications. We have witnessed the exceptional spectacle of Courts of Justice, endeavouring, truly and indifferently, to perform their functions, within the sphere of "martial law," proclaimed on the ground of military necessity, and having to deal with multifarious matters arising out of that abnormal state of affairs. At the same time, wide-spread rebellion has led to many indictments for treason, which, being laid under the common law, have involved an investigation of the old Roman-Dutch authorities on such subjects as *perduellio* and *læsa maiestas*. Until recent years, it seems to have been assumed, both by the Courts and by the Legislature of the Cape Colony, that high treason was, as it still is by the law of England, always a capital

offence. Van der Linden, however, lays down that the penalty for treason is "generally" death. There is much virtue in the word "generally;" and, in the cases which have occurred during the last three years, the Courts have held themselves entitled to exercise a discretion as to the penalty in cases of conviction for high treason, which indeed, according to some high authorities on the Roman-Dutch law, they might also exercise, if they thought fit, in cases of conviction for wilful murder, where it is commonly conceived that no such discretion exists.¹

Simultaneously with these trials, as will be seen by a reference to the reports, the Courts have had to deal with many of the consequences of a hostile invasion, such as the results of requisitions or commandeering of property, and its effect on contractual liabilities, the question of what constitutes the offence of aiding, assisting or comforting the King's enemies, the question of what degree of duress or pressure may be regarded as affording an excuse for conduct otherwise treasonable, the nature and limits of the allegiance due by foreign residents, the duty of such persons when living in a country invaded by the forces of the State of which they are subjects, the effects of a hostile occupation and of annexation by proclamation of territory not effectively occupied, the offence of trading with the enemy and the jurisdiction and procedure of Courts of Prize.

¹ Since these lines were written, I have myself exercised this discretion in the case of a boy of about ten years of age, convicted of the crime of murder.

The South African lawyer, when dealing with questions of criminal law and procedure, as well as with other branches of jurisprudence, has to familiarise himself with the authorities, not only on Roman-Dutch law, but also on the law of England, and especially with the effect of the reported cases, in which many questions are discussed with minuteness, and decided with authority, of which the treatment in the writings of the civilians is necessarily more abstract and general in its character. The great English authority, as to criminal jurisprudence, and particularly in its application to political offences, is of course the Collection of State Trials. Its very magnitude, however, presents an obstacle to its systematic study, while unfortunately the Index to the principal collection is far from satisfactory and comprises no concise alphabetical arrangement, either of the cases or their subjects, facilitating prompt and easy reference. It may perhaps be convenient to avail ourselves of this opportunity of giving a brief sketch, from a bibliographical point of view, of this publication, which it may be found useful to compare with the interesting account of the Year-Books, and other early Reports of civil litigation, which appeared in a recent number of this *Journal*.¹

The Collection which is commonly cited under the name of "Howell" consists of thirty-four large octavo volumes, including a General Index of the principal persons mentioned, and topics referred to, in its pages.

¹ 19 *S. A. Law Journal*, 23.

The volumes average from 600 to 700 pages, printed in double column and small type. Some of the earlier State Trials—such as the case of Hampden and the ship-money and the impeachment of Lord Strafford—were first printed in Rushworth's "Historical Collections," a work in eight volumes, published at different dates in the latter part of the seventeenth century, and were therefore not originally included in this series, which first appeared as a work in four folio volumes, edited with a preface by Mr. Salmon, and published in 1719. A second edition, in six folio volumes, edited by Emlyn, revised and brought up to date, appeared in 1730. Later editions were brought out by Hargrave, the last consisting of eleven folio volumes, extending to 1777 and published in 1781. These eleven volumes correspond to the first twenty volumes of the large octavo edition, and the General Index to the latter includes a parallel table of references to the former. The first ten volumes of the octavo edition are described as "Cobbett's Complete Collection." They were in fact produced by William Cobbett, who was not only an active writer and politician but also an energetic and enterprising publisher. It was Cobbett who began, just a century ago, the issue of the "Parliamentary Debates," since known as "Hansard"—just as he began the "State Trials," since known as "Howell,"—and published, in thirty-six volumes, the "Parliamentary History" up to the end of the eighteenth century. The first volume of Cobbett covers the period from 1163 to 1600, the next nine

extend only to 1685. The name of T. B. Howell first appears on the title-page of volume 11, but volumes 11 and 12 continue to bear the heading of "Cobbett's Complete Collection," which disappears from volume 13. Volumes 13 to 21 are edited by T. B. Howell. Volume 22 is the first volume of the "Continuation" by T. J. Howell, which covers, in 12 volumes, the period from 1784 to 1820. The whole series comprises 705 cases, beginning with the "proceedings against Thomas Becket, Archbishop of Canterbury, for high treason," in the ninth year of Henry II., and ending with the trial of Davidson and Tidd, on a similar charge, in the first year of George IV.

After the Howells concluded their labours, there occurred a long gap, which has since then been only partially filled. In 1850, Mr. Townsend published a work in two volumes, containing an interesting selection of "Modern State Trials." In 1882 there appeared, also in two volumes, Mr. Browne's "Narratives of State Trials in the Nineteenth Century, 1801-30." This work contains, set in a useful thread of historical narrative, besides accounts of various press prosecutions, charges against officials, in the colonies and at home, and other matter, a description of several cases of treason, rebellion and conspiracy against the State, down to the end of the reign of George IV. The most important cases of this kind included in the work are the rebellion of Emmet and others in Dublin in 1803, the case of the Luddites in 1813, the trial of Hunt and

others for the Peterloo riots in 1820—a case in which the argument of Scarlett, who led for the Crown, will be found in an Appendix to the Life of Lord Abinger, written by his son¹—and the trial of Thistlewood and others for the Cato Street conspiracy in the same year. It will be seen that Mr. Browne's book, convenient for reference as in some respects it is, is open to the criticism that it covers little ground not already occupied by Howell, on whose reports it is mainly based; considering the date of its publication, it would have been much more useful had he extended his researches to a later period. In the following year, Mr. Justice Stephen published his invaluable "History of the Criminal Law," a repertory of information on the whole subject. It includes references to over a hundred trials, some of them not comprised in Howell and others of later date, the most recent mentioned being that of Mr. Parnell and others for seditious conspiracy in 1880. The student of Howell should not fail to consult Mr. Justice Stephen's work, which contains much acute criticism and many instructive observations on the manner in which the cases were conducted, the points of law involved and the gradual evolution of criminal procedure.

The next important monograph on the subject, which demands a word of reference, is the "Examination of the Trial for Sedition in Scotland," published

¹ "A Memoir of James, First Lord Abinger." By the Hon. P. C. Scarlett. London: 1877 (reviewed in the *Cape Law Journal*, 3, 138). See "Two Eminent Lawyers:" "Collectanea," 135-146.

by Lord Cockburn in 1888. The editors of the English State Trials contrast favourably the law of Scotland with that of England in its treatment of the accused, especially with regard to the facilities afforded to prisoners for examining the depositions;¹ but such facilities do not seem to have availed them much when they came before a weak and pliant Bench, dominated by the strong legal intellect of the notorious Braxfield, presiding as Lord Justice Clerk. Lord Cockburn's book contains twenty-five cases, of which the first thirteen took place, mainly before Braxfield, in 1793-4, five more in the last few years of the eighteenth and the remaining seven in the first half of the nineteenth century. The earlier cases owed their origin to the French Revolution, and the charges were mainly those of publishing and circulating writings, alleged to be revolutionary and seditious, such as Paine's "Rights of Man," belonging to unlawful associations, and expressing sympathy with such propaganda. Lord Cockburn tells us that, so far as he can discover, they were the first cases of "pure sedition" ever tried in Scotland. As he puts it, "Trials for sedition are the remedies of a somewhat orderly age. They can scarcely occur in

¹ "It must be admitted," says Mr. Salmon in his Preface (Vol. I. p. XX.), "that the party accused has in Scotland all the fair play imaginable: he has what counsel he thinks fit: he has a copy of his charge in his own language; and his counsel are permitted to inspect the very Depositions against him before he is brought to Trial." It seems that Scotch criminal procedure, nearly two centuries ago, was thus considerably more humane not only than the contemporary English system but than that in vogue in South Africa before the military tribunals of the twentieth century.

times so rude or so tyrannical as to exclude the idea that political intemperance may be a mere excess in the exercise of constitutional liberty. In the summary reasoning of barbarous power, every opposition to existing authority is high treason." His Introduction contains a valuable examination—historical, philosophical and juristic—of the whole subject. As to the trials, he thought that "from the interest of the subject, and the duty of never letting Braxfield, and the years 1793–4 be forgotten, they are not unworthy of publication." Of Braxfield he writes:—

"Braxfield was a profound practical lawyer, and a powerful man; coarse and illiterate; of debauched habits, and of grosser talk than suited the taste even of his gross generation; utterly devoid of judicial decorum, and, though pure in the administration of civil justice where he was exposed to no temptation, with no other conception of principle in any political case except that the upholding of his party was a duty attaching to his position. Over the five weak men who sat beside him, this coarse and dexterous ruffian predominated as he chose. He had the skill to conceal his influence by making what he wished be said or done by his brethren; but everybody who understood the scene knew whose mind was operating. *Bring me prisoners, and I'll find you law*, was said to be his common answer to his friends, the accusers, when he learned that they were hesitating. Though he was much in my father's house, where these matters were very freely, and very rashly, discussed, I never heard him utter, or recognise, such a sentiment. But I heard it often repeated, and never questioned, as his saying by his personal friends, who mentioned it as worthy of the man and of the times. Except Civil and Scotch Law, and probably two or three

works of indecency, it may be doubted if he ever read a book in his life. His blameableness in these trials far exceeds that of his brethren. They were weak; he was strong. They were frightened; he was not. They followed; he, the head of the court, led."

And he adds, in a note :—

"Lest it should be thought indecorous, in a judge, to speak so irreverently of judges, I may protect myself by the authority of Camden, who, in delivering his opinion, as head of the Common Pleas, in Wilkes's case about general warrants, and referring to the weight due to the Court in the case of the seven bishops, says, "Allybone, one of the three, was a rigid and a professed Papist; Wright and Holloway, I am much afraid, were placed there for doing jobs; and Powell, the only honest man on the bench, gave no opinion at all." ("State Trials," XIX. 993.)

Braxfield, it will be remembered, has since been immortalised in "Weir of Hermiston," and his is one of the characters included in a little book, recently published by Mr. Watt, under the significant title of "Terrors of the Law."¹

Simultaneously with the publication of Lord Cockburn's monograph, in 1888, there appeared the first volume of the "New Series" of State Trials. This important production was the result of a memorandum presented to the Treasury by Lord Thring, then Parliamentary draftsman, which led to the formation of a Committee to deal with the subject. The Committee was appointed, with the consent of the Treasury, by the Lord Chancellor, and included, besides several

¹ "Terrors of the Law." By F. Watt. London: Lane. 1902.

members of the Bench, Lord Acton, Lord Thring, Sir Henry Jenkyns, Mr. Frederic Harrison, and other distinguished lawyers and historians. The cases for publication were selected by a sub-committee, and, during the succeeding ten years, eight large octavo volumes were issued, the first three being edited by Mr. Macdonell and the remainder by Mr. Wallis. It was estimated that the work, on the scale contemplated, covering the period from 1820, where Howell leaves off, to the date of its inception, would probably be comprised in eight or ten volumes. As a matter of fact, the eight volumes hitherto published have actually embraced little more than half that period. The series for the present has been terminated, but it is to be hoped that it will sooner or later be resumed and brought up to date. During the last forty years—and before the Special Courts in the Cape Colony and Natal began their sittings—the number of important cases of a political nature has perhaps not been very considerable. But, among others which occurred during the latter portion of the last century, and which such a collection should include, we may mention the proceedings which arose out of the rebellion in Jamaica, associated with the name of Governor Eyre; the Fenian trials and some of the other political prosecutions in Ireland; and the trial of Dr. Jameson and others, on which there arose some important questions of international law. At the date of writing, it seems possible that another case, involving some nice points, may

shortly have to be added—that of Mr. Lynch, M.P., who has been committed for trial on a charge of treason in taking up arms in the cause of the South African Republic, of which he alleges that he was at the time a duly admitted burgher.¹

Among more recent publications on the same branch of law, we can afford space for only a very brief reference to Mr. Atlay's "Famous Trials of the Century," which appeared in 1899, and makes a very readable book. It begins with the once famous trial of Thurtell and Hunt for the murder of Weare, a case now perhaps chiefly interesting, from a literary point of view, as the origin of Carlyle's "gigmanity," and, from the lawyer's standpoint, for the technical ground on which Chitty, for the defence, unsuccessfully moved in arrest of judgment, the trial having commenced on the feast of the Epiphany, "when it was the duty of Christians to cease from all labour and apply themselves to holy works."² Mr. Atlay's book contains seven more criminal trials, all of considerable interest, and concludes with an elaborate account of the Tichborne case, and the prosecution of the claimant, which was the last occasion of a trial at bar before that of Dr. Jameson.

In the following year, as a result of the world-wide interest taken in the case of Dreyfus, Mr. Sanderson

¹ Since this was written, Mr. Lynch has been convicted, the Court holding his naturalisation to have been, in the circumstances, invalid.

² The most recent cases, in England and South Africa, on the effect of the occurrence of *dies nefastus* on criminal proceedings appear to be *R. v. Winsor*, L.R. 1 Q.B., 289, 290: *R. v. Herman*, 1 Buch. A.C., 316.

published an interesting little volume of "Historic Parallels." Besides the celebrated French case of Calas, in the eighteenth century, memorable for the championship of Voltaire, by whose exertions the memory of the victim was rehabilitated,¹ he deals with the very apposite parallel of the melancholy history of "the Catholic victims of Titus Oates," while the last case in his book is that of Lord Cochrane and others, tried before Lord Ellenborough in 1814, and convicted of conspiracy and fraudulent manoeuvres on the Stock Exchange. There is probably no case which has been more widely or frequently discussed. It is dealt with at great length in Mr. Browne's book (Vol. II., pp. 90-174) and also reported by Townsend (Vol. II., 1-111), who heard Cochrane's defence in the House of Commons, and concurs in the general view of his innocence. It has been made the subject of a separate and elaborate monograph by Mr. Atlay; and Mr. Atlay's *plaidoyer* for Lord Cochrane produced a rejoinder by Mr. Law, as the present representative of the distinguished Judge on whose conduct of the trial such severe animadversions have been made.

The last work which comes within the scope of this article is a small selection of "State Trials, political and social," edited by Mr. H. L. Stephen, now a Judge

¹ It was a curious and significant incident of the Dreyfus controversy that the eminent French critic, M. Brunetiere, who had previously expressed the same view as other people of the *affaire Calas*, recanted his opinion and, out of respect for *la chose jugée*, professed to have come to the conclusion that, after all, that unfortunate victim of prejudice and superstition was probably rightly convicted.

of the High Court at Calcutta, of which the first series, in two volumes, appeared in 1899 and seems to have proved sufficiently popular to warrant a continuance of the experiment, with the result that a second series, of similar form and size, was published last year. "Popular" is perhaps the most appropriate epithet for this production, to the merits—and demerits—of which we may subsequently refer at greater length. It is rather difficult to follow Mr. Stephen's conception of a "State Trial," which is withal of a "social" and non-political character; but presumably what he means is that he has taken his cases from the Collection which goes under that generic name, as indicating the nature of the bulk of its contents. The cases related by Mr. Stephen—twenty-one in all—are, with one exception, abbreviated from Howell, while the editor has added a few words of introduction and running commentary, together with some biographical notices, apparently mainly derived from the Dictionary of National Biography. These notices are convenient and would be still more useful were they not disfigured by an extraordinary number of inaccuracies—especially in dates—which, it is charitable to surmise, may possibly be to some extent attributable to the author having accepted a wider sphere of usefulness, and gone to Calcutta, before the whole of the work was sent to press. Mr. H. Stephen's¹ volumes have been well reviewed

¹ To avoid confusion with Mr. Justice Fitzjames Stephen, we refer throughout to the editor of this collection, notwithstanding his promotion to the Indian bench, as Mr. H. Stephen.

and may perhaps prove serviceable, as a sort of *hors d'œuvre*, in stimulating the appetite of the student for more solid fare.

In surveying this mass of legal literature, one of the first questions which inevitably occurs to the mind is that of its authenticity. Mr. H. Stephen, in one of his humorous, if rather flippant, "Introductions," describes himself as having been, while studying Howell, "under the spell of long since defunct reporters, the failures probably of twenty generations of lawyers." This involves the bold suggestion that the tribe of law reporters—the critics, as he unkindly suggests, who had failed in the active practice of their profession—may be traced back to the time of Magna Charta, a suggestion for which, we need scarcely add, there is no historic warrant. He goes on to speak of "the life-like style of narration which Howell and his predecessors inherited from the original but unknown authorities." Who were these authorities and what are the real sources of the State Trials? In two cases, Mr. Stephen gives us a hint on the subject. For the trial of Essex, he did not content himself with Howell, but took the trouble to collate the hitherto unpublished Helmingham MS., the property of Lord Tollemache, a contemporary document, in some particulars different from Howell's version, and of which Mr. Stephen's narrative is practically a transcript. The MS., he says, "pretty certainly represented the report of an intelligent eye-witness, I should suppose a barrister, made from

notes taken in court.” Again, with regard to the Trial of Charles I., the report was first published “by Authority, to prevent false and impertinent relations.” Clement Walker tell us:—“I hear much of the King’s argument is omitted, and much depraved, none but licensed men being suffered to take notes;” and Mr. Stephen adds that the narrative “so far as one can judge from internal evidence, is rather the slightly amplified transcript of a barrister’s note than the work of anybody who in those days might represent a modern newspaper reporter.” In these and many other cases, the professional reader, knowing by melancholy experience how seldom the current reports, especially of criminal trials, are even tolerably satisfactory, is apt to inquire, with Lord Macnaghten, “Why should an obscure report be taken for gospel merely because it is old?”¹

As a matter of fact—*pace* Mr. Stephen and his “twenty generations of defunct reporters”—the earlier cases in the Collection were not reported at all, and the first trials of which we possess what purport to be reports of the oral evidence took place in the time of Queen Mary. Previous to this, we have merely copies, taken from the court records, of indictments—often very copious and including much recitation of what would now form portion of the evidence—depositions and other similar documents. As for short-hand reports, they are of much later date. The art is said to have been invented

¹ Cf. 19 *S. A. Law Journal*, 311.

by Tiro, the amanuensis of Cicero, who doubtless found it impossible to cope by ordinary methods with the phenomenal fluency of his chief. Like most other inventions of western civilisation, we shall probably some day learn that it had long previously been practised in China; but the stenographic art, in one form or another, was at all events familiar to the Romans of the later Republic and the Empire. Martial, for instance, describes the proficiency of the short-hand writer of his day and the skill with which he could "take," and overtake, the most rapid speaker:—

Currant verba licet, manus est velocior illis :

Nondum lingua suum, dextra peregit opus.

But phonography seems to have become obsolete and to have first been revived, by one Bright, in the spacious days of Queen Elizabeth; whilst the modern symbolic system was gradually developed in the seventeenth and eighteenth centuries, and, in the absence of anything corresponding to the modern newspaper, was not habitually employed in the courts of law till a considerably later period. Perhaps, after all, it was no great loss. The best short-hand writer seldom has much scope for his skill in court. If he represents the press, the newspapers can rarely afford space for more than an extremely condensed version of any trial, and such a *résumé* is on the whole likely to be more substantially accurate if supplied by a trained lawyer, who can see what is material and appreciate the point of technical arguments, than if prepared by an

unprofessional reporter, even though he be an expert stenographer, who is hampered by the conditions under which he works, and can scarcely be expected to take, or transcribe, a full note for which there will probably be no demand.

Notes taken by the judges, or by counsel present in court, often supply a sufficiently accurate summary of the pith of the evidence; as to the speeches, they have probably, as a rule, been composed from brief notes, aided by recollection, of their substance, but in a good many cases the editors seem to have obtained corrected versions from the speakers themselves. As Mr. Salmon puts it in his Preface, "the further we search into Antiquity, the less perfect will our Accounts be; the same exactness cannot be expected there as in Trials of a modern date; but this much may be said for the more antient Trials, that they are the most perfect and compleat that could possibly be procur'd." That is probably not saying much; but he goes on to add, "As to the mss., such care has been taken to avoid all mistakes, that the Judges and Counsel, who were concern'd in such Trials, and are still living, have been attended with their respective Arguments, and have been pleased so far to encourage the Undertaking, as to correct whatever was omitted." As everyone knows, who has had any practical experience of the matter, the task of revising from memory an imperfect or inaccurate report is one of almost impossible performance; as a rule, all that can be attempted is to

correct, more or less at a venture, the most glaring errors and the most obvious absurdities; and it may be conjectured that in many instances the editing, probably after a long interval of time, by busy judges and counsel, of their reported arguments and dicta, must have been, from the necessities of the situation, but perfunctory and incomplete. Mr. Townsend also mentions that in some cases the speeches included in his collection were corrected by the speakers themselves, such as Whiteside, Talfourd and Cockburn.

Having thus briefly discussed the bibliography, the literature and the sources of the State Trials, we proceed to examine their subject-matter. Such an examination, owing to the inexorable limits of space, must be merely cursory and eclectic. Our first observation is that the title of "State Trials" is to some extent a misnomer. A State Trial should mean either a trial for a public or political offence, or the trial of an official or other public personage; but a good many of the cases in Howell do not fall within this definition. According to Mr. Justice Stephen, up to the year 1640, only one ordinary prosecution is reported in his Collection—a case of appeal of murder, tried in 1628,¹ and taken from the papers of Serjeant Maynard, the veteran who survived all his legal contemporaries and, on the fact being remarked by William III., informed him that, had he delayed his coming, he would have survived the law itself. The later volumes, however,

¹ Stephen's "History," I. 315.

contain much varied fare, and in fact afford, like the calf's head, "a good deal of fine confused eating." Many cases are included which, as the editors admit, "cannot properly be called State Trials." As is explained in the Preface of 1766, "it would be confining the Collection in too narrow a compass, to insert only State Trials; we have endeavoured to follow Mr. Emlyn's steps and taken in such Trials, for Murder, Perjury, Forgery, &c., as have been published at large; for all Trials, even in these Cases, are Helps to History, and are useful to the gentlemen of the Law as well as to Historians, as they give the opinions of the greatest lawyers on the different points brought before them." Similarly, Mr. Townsend, following Emlyn and Hargrave, does not confine himself to political offences, on the ground that such a work, "however logically correct, would be wanting in spirit and variety." His volumes embrace "such legal proceedings as would be most likely to command the attention of all members of the community, and to be read by them with pleasure and profit." The ponderous result of this comprehensive ambit of the older editors reminds us of the wise proverb, *qui trop embrasse, mal étreint*; and a judiciously abridged selection of those political cases which deal with topics still practically important is, from the lawyer's point of view, still a *desideratum*.

As it stands, Howell's Collection, besides cases of crimes against the State, and trials of peers for divers felonies before the Court of the Lord High Steward,

includes a good many prosecutions for ecclesiastical offences, for Heresy and Simony, for Perjury and Piracy, for Abduction, Bigamy and Witchcraft, some cases in constitutional law, such as *Ashby v. White*, and one curious indictment, with a faint political or fiscal flavour, "for preaching a Charity Sermon and collecting Money for the same," which was held, in 1719, to constitute an offence at common law.¹ The sermon was preached for a London charity in the parish church of Chislehurst, with the consent of Atterbury, the Bishop of the diocese, and the full approval of the rector of the parish. But some of the local justices objected and stopped the collection during the offertory. A great disturbance ensued and, in the sequel, the rector, the preacher, whose sermon was admittedly "suitable to the occasion," and all who had abetted them in their nefarious conduct, had to stand their trial, "as rioters and vagrants," at the Maidstone Assizes. It was a case of first impression; but they were found guilty on the ground that "here in England no collection, even for charity (unless for the poor of the same parish) is, by law, to be made, but by leave or permission of the King, gathering of money being so nice a matter that it must not be done, even for charity, without his leave, in the most compassionate cases." The parson and his fellow criminals were fined

¹ *R. v. Hendley and others*, 15 S.T. 1497: cf. Stephen's "Hist." II., 319-321. The case, he adds, "illustrates the extent to which it was possible, up to a very recent date, to increase by judicial decision the number of offences known to the law."

a noble (6s. 8d.) apiece, with a warning that, as it was a test case, they were let off lightly, "but now that a verdict had settled it, there would be very heavy fines upon those who should presume to offend in like manner hereafter." The law, however, as thus laid down, was scouted by Lord Hardwicke, when Chancellor, in 1745. The ruling does indeed seem to have been a trifle harsh; but the modern victims of charity-mongers and subscription fiends, and the numerous tribe who practise philanthropy as defined by Sydney Smith, may sometimes sigh for the good old times and think that, after all, there was something to be said for the view taken by Justice Powys and the twelve good and true men of Kent, whose names are duly recorded by Howell.

The above quotations are taken from a long account of his experiences on circuit, addressed by the Judge of Assize, Sir Littleton Powys, to Lord Chancellor Parker, better, and more unfavourably, known as Lord Macclesfield. The Judge's mind was full of the nice point about the charity sermon, as to which he concludes with a reference to that arch offender, the Bishop of London, who, as he had been informed

"had issued a circular letter to all his clergy to collect charities in their parishes for the poor vicarages in England, which I thought much akin to the late collection in Kent, or rather more dangerous, not only by raising a vast sum of money (if the like in all dioceses) but also by marking out people how far affected to the Church throughout England, and casting some reflection upon Queen Anne's

bounty, yet as if to be supported by begging : and this done in a time of taxes, which must appear the more heavy after such collections ; and the clergy would thus gain a power of raising money as they please, and applying it as they please. How this project goes on, I know not ; but sure it ought to be stopped : and for that purpose, a thing very apposite was mentioned in the debate of the late trial in Kent ; that commonly about Christmas, when it is hard with the poor for want of work, in great frost and snow, then the bishop of London does send a circular letter to the parishes within the bills of mortality, to make collections for the poor, to be put into the hands of the lord mayor. . . . This deserves to be enquired into."

The charity question having been thus satisfactorily disposed of, with some apology for the leniency of the sentence, he goes on to refer succinctly to some other incidents of his tour, in the following passage, which throws an interesting sidelight on the manners and customs of the time, and indicates that Sir Littleton was not without a grim vein of humour of his own :—

"A man of Rochester, worth nothing, was convicted before me of drinking the Pretender's health. I ordered him to be whipped, in open market, twice, till his back was bloody, with a month between the first and second whipping.

"And at Lewes, a man of Rye was convicted before me for drinking the health of King James the 3rd, and saying he knew no such person as King George. He had run out a good estate by looseness, and had nothing left but an annuity of £30 per annum for his life. I fined him £100 and committed him till paid, and that he would find good

sureties for his good behaviour for three years next after the payment of the fine. I told him, that by his paying £100 to King George, he would certainly know there is such a person.

“Your lordship’s notion, against setting a state offender in the pillory, was certainly very right, and did so convince me, that I have ever since ordered corporal or pecuniary punishment upon them, as having a better effect upon shameless people, and without giving the mob an opportunity to be troublesome.

“I declared in all my charges in this circuit, as I did the two last terms at Westminster, that the number of base libels, and seditious papers, is intolerable, and that now a quicker course will be taken about them; for that now the government will not be so much troubling himself to find out the authors of them, but as often as any such papers are found on the tables of coffee-houses, or other news-houses, the master of the house shall be answerable for such papers, and shall be prosecuted as the publisher of them, and let him find out the author, letter-writer, or printer, and take care, at his peril, what papers he takes in.”

The pillory, it may be added, notwithstanding the sensible opinions here expressed, continued to be in vogue as a punishment till long afterwards; and, in one of the cases selected by Mr. H. Stephen, we find that an unfortunate prisoner, when in the pillory, was struck dead, while three others were “saved from destruction by the popular fury, with the utmost difficulty, by the sheriffs and other peace-officers.” Some years previously, in 1732, two men “were tried at the Old Bailey for the murder of John Waller in the pillory,

by pelting him with cauliflower stalks, &c., and found guilty, and both executed at Tyburn." As the reporter reasonably remarks, "Whatever punishment they might deserve from the law, it is certain they ought not to be killed through the rage of the populace."¹ The pillory, it may be added—in which Lord Cockburn, two years before, had been ordered by Lord Ellenborough to stand—was abolished in all cases, except that of perjury, in 1816, and absolutely, without exception, in 1837. It has, however, in recent years been resuscitated by that ardent admirer of ancient institutions, Mr. Henry Labouchere.

Among the twenty-one cases selected by Mr. H. Stephen, though he tells us that "he likes the political cases best," adding, rather inconsistently, that "there is a squalor about private crime which, though I like it myself, is inferior to politics as a staple," less than half can be so described. Some of the others have certainly a "social" interest; but it is difficult to accept his *dictum*, in the preface to the later series, that, in the whole of Howell's collection, there were not more than ten cases, of a political complexion, concisely reported or capable of condensation, which proved on investigation sufficiently attractive to be suitable for such treatment.

It was not however till the Treasury—not Cobbett, nor another—paid the shot, that the editors of State Trials were severely restricted to their proper business.

¹ *R. v. M. Daniel and others*, 19 S.T. 715; H. Stephen, IV. 191-2.

For the purposes of the New Series, "State Trials were defined as meaning in general trials relating to offences against the State, or trials illustrative of the law relating to State Officers of high rank, *e.g.*, Ministers or Governors of Colonies." The first case reported is that of Sir Francis Burdett, on an information for publishing a seditious libel. It includes the full report—taken from the Appendix to the Life of Lord Abinger—of Scarlett's classical disquisition on the nature of libel and the law of publication; but, notwithstanding that famous forensic effort, the King's Bench, by a majority, discharged the rule for a new trial. Sir Francis was thereupon sentenced to a heavy fine and three months imprisonment; and the present writer remembers being told by his grandfather that he recollected forming one of a company of young and sturdy Radicals, who escorted the prisoner to his place of confinement "in the custody of the Marshal of the Marshalsea." This, as well as two other cases reported at great length in the same volume, arose out of the Peterloo affair of 1819, of which the object, as alleged by the Crown, was "to excite hatred and contempt of the Government and Constitution," but which was really little more than a great but orderly demonstration in favour of reforms—such as "vote by ballot" and "no corn laws"—subsequently incorporated into the said constitution without any detrimental consequences to the body politic.

One of the trials in the same volume, it may here

be noted, is entitled "proceedings in the Consistory Court of London to declare null and void an alleged marriage between two British subjects at the Cape of Good Hope," and contains a judgment by Lord Stowell "as to the question what laws applied to marriages contracted at the Cape of Good Hope immediately after its conquest."¹ The limits of space obviously preclude anything like a detailed survey of the contents of this important and authoritative publication. As might have been anticipated, both from the principles of selection adopted, and the ability of those responsible for its execution, the work has been admirably done and, for the period embraced, may be regarded as exhaustive, while it includes excerpts from many records and other official documents not generally accessible. The last trial in the last volume is that of Simon Bernard, which was a sequel to the Orsini conspiracy for the assassination of the French Emperor, while the diversity of the matters embraced within its scope may be illustrated by the circumstance that this prosecution is immediately followed, on the concluding pages, by a report of the proceedings before the Judicial Committee of the Privy Council in *ex parte Robertson*, a case involving an important question as to "amotion from a colonial office held during the pleasure of the Governor."

The impression produced by a study of the State Trials at large, the guide which they afford to the

¹ *Reding v. Smith*, S.T., N.S., 1. 1053.

historical evolution of our present system of procedure, and some of the reflections which they suggest, of special interest and importance, particularly in South Africa, at the present day, are topics which we hope to discuss in another article.

II

WHAT, it may be asked, is the dominant impression produced on the mind of the student who investigates the mass of legal history and literature which goes under the name of the State Trials? The upshot of the whole matter, from one point of view, is certainly this, that, for a British subject, suspected of crime and especially of political crime, it is a fortunate circumstance if he happened to live in the reign of Queen Victoria rather than in that of any of her predecessors. The odds against such persons, in earlier times, were heavy; the Crown, in fact, seems to have played with loaded dice, or to have generally had, *pro re nata*, a useful card up its sleeve; and the consequences of an adverse verdict were extremely inconvenient both to the person and the property of the prisoner at the bar.

To begin with, he could expect but scanty protection from the Court. In important trials, both for political and for ordinary offences, there were often several judges on the bench; but, especially in cases of the former kind, there were more judges than justice and the quality of impartiality was distinctly strained. Mr. H. Stephen, in discussing the trial of Sir Walter

Raleigh, which to the modern lawyer seems a mere mockery of justice, quotes the high authority of the late eminent historian, Mr. Gardiner, to the effect "that in political trials at all events, when the Government had decided that the circumstances of the case were sufficient to justify them in putting a man on his trial, the view of the Court before which he was tried was that he was to be condemned unless he succeeded in proving his innocence"—for doing which, it may be added, his opportunities were very limited.¹ If the judges were partial, and subservient to the Crown, it was the natural result of the conditions under which they held their office. As Becky Sharp put it, it is easy to be virtuous on £5000 a year; especially if the £5000 a year is paid regularly, every quarter day, to the incumbent of the office, *dum bene se gesserit*, in the modern meaning of that phrase, and not merely *dum placuerit*, as was formerly the case. The distinction is all important, although Mr. Chamberlain, in replying to a question in the House as to the administration of justice in the Transvaal, appeared to find it unintelligible.

In the times of the Stuarts, there was short shrift for an upright judge. Such an one, for instance, was

¹ In England under the Stuarts the presumption was much the same as in the nineteenth century, in the Philippines and elsewhere, under the rule of Spain, where, as Mr. Clifford observes, in an interesting account of "The Story of Jose Rifel the Filipino" (*Blackwood's Magazine*, Nov. 1902), "by the Spanish law, the burden of proof is made to lie with the prisoner; he is held to be guilty until he has proved his innocence."

Pemberton, who presided, assisted by other judges, at two of the trials selected by Mr. Stephen—that of Count Coningsmark and others for murder in 1682 and that of Lord Russell for treason in the following year.¹ Nothing could have been fairer, more dignified or more judicial, than Pemberton's demeanour in both cases; but a few weeks after the conviction of Russell—for which, it may be remarked, there is much more to be said than the reader of Macaulay would suppose—he was dismissed from his office. His place was taken by Jeffreys, who had been of counsel for the Crown; Scroggs was already on the bench. The present is an age of rehabilitations; from Tiberius the Tyrant to Robespierre the incorruptible, all the notorious characters are getting their coat of white-wash. Jeffreys, for whose conduct in various cases Mr. Justice Stephen, in more than one passage, shows there was something to be said, was, as we have recently learnt from the vivacious pages of Mr. Irving, by no means so black as he has been painted; the field is still open to anyone who would like to attempt a similar *tour de force* in the case of Scroggs.

If the prisoner had little to hope for from the attitude of the judges, no greater reliance could be placed, in the good old days, on the modern "palladium" of the liberty of the subject. In the time

¹ H. Stephen, St. Tr., III. 223 and II. 3. Lord Russell is commonly but incorrectly described as Lord William Russell. His however was only a courtesy title, and he was therefore not entitled to a trial by peers.

of Charles II., the Sheriffs of the City were sometimes on the side of the opposition; they did a little jury-packing in favour of the accused; but to such displays of civic independence the Crown retorted with the famous writs of *quo warranto*. In earlier times, the jurymen, if they failed to agree, are said to have been compelled to follow the Judges in Eyre, and to have been carted round the country in their train, until they came to a verdict; and it was desirable that the verdict should be in favour of the Crown. In the case of Sir Nicholas Throckmorton, in the time of Queen Mary, of pious memory, the jury, after a long deliberation, acquitted the prisoner. "They were committed," we read, "to prison for their verdict, and eight of them (four having submitted and apologised) were brought before the Star Chamber and discharged on the payment by way of fine of £220 apiece." It is scarcely surprising to learn that "this rigour was fatal to Sir John Throckmorton, who was found guilty upon the same evidence on which his brother had been acquitted." Even in the case of peers of the realm, the *legale iudicium parium suorum* was interpreted to mean a trial before the Lord High Steward and such "Lords Triers" as he thought fit to summon; and it was not till the reign of William III. that it was provided that all Peers of Parliament should be summoned to attend and have the right to vote at such trials. Jury-packing has fortunately long been unknown in any portion of the King's dominions, either within

or beyond the seas, always of course excepting Ireland, where it still admittedly exists.

Ireland too is the only part of the Empire in which complaints are still made of the pliancy of "removable" magistrates and the overbearing and overheated advocacy of counsel for the prosecution. That there exists a marked distinction between the forensic attitude of the representatives of the Crown in England and Ireland was indeed admitted some years ago by so competent and impartial an authority as Lord James of Hereford. In former times, things in England were very different. Nothing, for instance, seems so horrifying in the trial of Raleigh, nothing has caused so indelible a stain on the reputation of one of our greatest lawyers, as what has been described as the "rancorous ferocity" of Coke's behaviour as Attorney General and his brutality in the wordy warfare in which he was constantly engaged with the accused. Coke, it may be mentioned, had begun his opening speech by saying "we carry a just mind to condemn no man, but upon plain evidence." Let us give a few examples of his "just mind :"

RALEIGH.—Your words cannot condemn me ; my innocence is my defence . . .

ATTORNEY.—Nay, I will prove all ; thou art a monster ; thou hath an English face but a Spanish heart . . .

RALEIGH.—Let me answer for myself.

ATTORNEY.—Thou shalt not.

RALEIGH.—It concerns my life.

L.C.J.—Sir Walter, Mr. Attorney is but yet in the

general : but when the King's Council have given the evidence wholly you shall answer every particular.

And again :

RALEIGH.—If my lord Cobham be a Traitor, what is that to me?

ATTORNEY.—All that he did was by thy instigation, thou viper : for I “thou” thee, thou Traitor.

RALEIGH.—It becometh not a man of quality and virtue to call me so : But I take comfort in it, it is all you can do.

ATTORNEY.—Have I angered you?

RALEIGH.—I am in no case to be angry.

POPHAM, C.J.—Sir Walter, Mr. Attorney speaketh out of the zeal of his duty, for the service of the king, and you for your life ; be valiant on both sides.

Later on, after describing Raleigh as a “Spider of Hell,” Coke was rebuked for his impatience by Lord Salisbury and “sat down in a chafe and would speak no more until the commissioners urged and intreated him.” Soon afterwards, however, we find him “going strong” again :

ATTORNEY.—Thou art the most vile and execrable traitor that ever lived.

RALEIGH.—You speak indiscreetly, barbarously and uncivilly.

ATTORNEY.—I want words sufficient to express thy viperous treasons.

RALEIGH.—I think you want words indeed, for you have spoken one thing half a dozen times.

ATTORNEY.—Thou art an odious fellow, thy name is hateful to all the realm for thy pride.

RALEIGH.—It will go near to prove a measuring cut between you and me, Mr. Attorney.

On the whole, it is just as well that Mr. Advocate Hutton, in appearing before the Special Treason Court at the Cape, did not take Coke for a model. His style indeed might have been thought somewhat emphatic even in a military court. On the nature of the procedure which led to these unseemly wrangles, Mr. Justice Stephen has some instructive remarks. He points out that

“The prisoner, in nearly every instance, asked, as a favour, that he might not be overpowered by the eloquence of counsel denouncing him in a set speech, but, in consideration of the weakness of his memory, might be allowed to answer separately to the different matters which might be alleged against him. This was usually granted, and the result was that the trial became a series of excited altercations between the prisoner and the different counsel opposed to him. Every statement of counsel operated as a question to the prisoner, and indeed they were constantly thrown into the form of questions, the prisoner either admitting or denying or explaining what was alleged against him. The result was that, during the period in question, the examination of the prisoner, which is at present scrupulously, and I think even pedantically, avoided, was the very essence of the trial, and his answer regulated the production of the evidence; the whole trial, in fact, was a long argument between the prisoner and the counsel for the Crown, in which they questioned each other and grappled with each other's arguments with the utmost eagerness and closeness of reasoning.”¹

¹ “History,” I. 325-6.

We have said enough about the court, the jury and the counsel for the Crown. What about the case for the defence? What was the position of the counsel and witnesses for the accused? The position was like that of the Spanish fleet on an historical occasion; they could not be descried, because they were not in sight. They resembled the snakes in Iceland; they are omitted from the description, because there were none. In early days, apparently in England and certainly in Scotland, the prisoner was not allowed to call witnesses; as is explained in a summary of the law of Scotland, laid before Parliament in 1607, "If A accused B for breaking his stable and stealing his horse such an hour of the night, the pursuer may be well admitted to prove what he hath alleged; but the defendant can never be admitted to prove that he was alibi at that time, for that would be contrary to the libel, and therefore most informal." Later on, prisoners were allowed to produce witnesses, but not to have them examined on oath,¹ a distinction however of which a fair-minded judge often contrived to minimise the effect. Thus, at the trial of Lord Warwick, presided over by the Lord Chancellor, Somers, as Lord High Steward, we find him explaining to a witness:

"Capt. Keeting, you are not upon your oath, because the law will not allow it. In cases of this nature the witnesses for the prisoner are not to be upon oath; but you

¹ On the history of this subject, *cf.* Blackstone's "Commentaries," 19th ed. IV. 359, 360.

are to consider that you speak in God's presence, who does require the truth should be testified in all causes before courts of judicature; and their lordships do expect, that in what evidence you give here, you should speak with the same regard to truth as if you were upon oath; you hear to what it is my lord of Warwick desires to have you examined, what say you to it?"¹

Similar cautions were administered to other witnesses and doubtless in other trials;² but it was not till the reign of Queen Anne that it was provided by statute (1 Anne, st. 2, cap. 9) that in all cases of treason and felony all witnesses for the defence should be examined upon oath in like manner as the witnesses for the Crown.

When counsel for the defence were first allowed to appear, it was only to argue on points of law; but this of course proved the thin edge of the wedge. "A practice sprung up," Mr. Justice Stephen observes, "the growth of which cannot now be traced, by which counsel were allowed to do everything for prisoners accused of felony except addressing the jury for them. In the remarkable case of William Barnard, tried in 1758, for sending a threatening letter to the Duke of Marlborough, his counsel seems to have cross-examined all the witnesses fully, *i. g.*, 'Q. It has been said he

¹ H. Stephen, St. Tr., II. 113.

² For an instance of the contrary spirit, we may cite the summing-up of Jones, J., on the trial of Gascoigne for complicity in the Popish Plot: "Gentlemen," he said to the jury, "you have the King's witness on his oath; he that testifies against him is barely on his word, and he is a papist."

went away with a smile. Pray, my lord Duke, might not that smile express the consciousness of his innocence as well as anything else? A. I shall leave that to the Great Judge.’”

Mr. Justice Stephen appears to be of opinion that this practice, “the growth of which,” he says, “cannot now be traced,” dates from about the middle of the eighteenth century; and a confirmation of this view will be found in the report of the strange case of Samuel Goodere and others, tried at the Bristol Assizes in 1741, for the kidnapping and murder, on board a man of war, lying in the Bristol roads—some question was raised as to the jurisdiction of the court—of Sir John Goodere, the prisoner’s elder brother. In this case, on the accused being asked by the Recorder, Sir Michael Foster, whether he had any questions to put to a witness, his counsel interposed as follows:—

SHEPARD.—Mr. Recorder, what I have to ask of you, with submission, in behalf of Mr. Goodere, is, that you will indulge counsel to put his questions for him to the Court, and that the Court will then be pleased to put them for him to the witnesses. It is every day’s practice at the Courts of Westminster, Old Bailey, and in the Circuit.

VERNON (for the Crown) replied that the matter was entirely in the discretion of the Court, and that Shepard could ask for nothing as a matter of right. The judges, he proceeded, I apprehend, act as they see fit on these occasions, and few of them (as far as I have observed) walk by one and the same rule in this particular; some have gone so far as to give leave for counsel to examine and cross-examine witnesses, others have bid counsel propose

their questions to the court ; and others again have directed that the prisoner should ask his own questions ; the method of practice in this point is very variable and uncertain ; but this we certainly know, that by the settled rule of law the prisoner is allowed no other counsel but the court in matters of fact, and ought either to ask his own questions of the witnesses, or else propose them himself to the court.¹

On this occasion counsel seems, after this discussion, to have suggested questions for the prisoner to put ; but the passage throws an interesting light on the development of the practice of which Stephen, who does not seem to have noticed this case, pronounces the growth obscure. It was not however till 1836 that, in cases of felony, counsel for the prisoner was allowed to address the jury ; and it was not till 1898 that the law of England, following that of the Cape Colony and other civilised communities, permitted prisoners, and their wives or husbands, to testify on their own behalf.

The reader may well wonder, in the case of a trial, especially of a political trial, say in the seventeenth century, with a pliant Bench, with Crown counsel "on the make," with the laws of evidence ill-understood and worse applied, with witnesses and counsel for the defence either conspicuous by their absence or bullied and hampered at every turn, what prospect the prisoner had of getting fair play. It must certainly have been a very sporting chance ; but the barbarity of the law seems in some instances to have been roughly counterpoised by its technicality, and the many "means of

¹ H. Stephen, II. 244-5.

escape " which were thus supplied, of which, as Stephen forcibly puts it, "the tendency was to make the administration of justice a solemn farce." "Such scandals," he adds, "do not seem to have been unpopular. Indeed, I have some doubt whether they were not popular, as they did mitigate, though in an irrational, capricious manner, the excessive severity of the old criminal law." For instance, in the case of Goodere, it was objected that, though it appeared that the deceased was a baronet, he was not so described in the indictment. The Crown replied, *inter alia*, that the baronetcy had not been proved by the production of letters-patent; and the defence rejoined "that they could not be expected to produce letters-patent to show that the deceased was a baronet, because the prisoner had not been allowed to see, or to have, a copy of his indictment; and that it was only on hearing it read that the defence became aware that the deceased was not described as a baronet." And so the battle raged. Mr. H. Stephen suggests in a note that "it is curious that Shepard (the prisoner's counsel) did not take the point that the prisoner was not described as a baronet, which he in fact became on his brother's murder. Till recently such an objection would have been fatal." But surely there is here a flaw in the logic of the learned editor. Both the prisoner and the deceased could scarcely have been described as holding the same baronetcy. We fancy Shepard knew his business; the prisoner *ex hypothesi* did not become a baronet till after the commission of the crime; and it

was apparently sufficient to set forth his status at the time of the offence alleged.

Perhaps the most celebrated instance of a successful technical objection was that taken, so lately as in 1841, by Sir William Follett, on the trial by his peers of Lord Cardigan for feloniously shooting, in a duel, at Captain Tuckett. There had previously been some similar cases, those, for instance, of Lord Mohun and Lord Warwick for the affair related in "*Esmond*," trials which throw an interesting light on the manners and customs of the period depicted by Miss Braddon in her "*Mohawks*." In the case of Lord Warwick, there was also a nice point as to whether, in the case of affray, a prisoner could be held responsible for the death of one fighting on his own side. Another point arose as to whether a prisoner, who had himself been convicted of felony and had obtained the benefit of clergy, but not been actually pardoned, was a competent witness in a court of law. Lord Warwick, and subsequently Lord Byron, in somewhat similar circumstances, were convicted of manslaughter, and both these noble lords claimed and obtained the benefit of their clergy; but that privilege had been abolished before the duel which led to the prosecution of Lord Cardigan. In the indictment against that peer, his opponent was described as "*Harvey Garnett Phipps Tuckett*." It was proved that there was a captain in the army bearing those names, but there was no evidence that he was on Wimbledon Common when the duel took place; it was

also proved that the person wounded by the prisoner was a Captain Harvey Tuckett, but not that he was the identical captain who also bore the names of "Garnett" and "Phipps." Follett, whose cross-examination was masterly in its reserve, when the case for the Crown was closed, pointed out the discrepancy between the indictment and the evidence, and Lord Denman, presiding as Lord High Steward, advised the peers that it was fatal. There was an unanimous verdict of acquittal, the Duke of Cleveland alone relieving his conscience by a slight variation from the usual formula and declaring the prisoner "not guilty *legally*, upon my honour." Mr. Townsend concludes his account of the case by observing that it was the "first commission in this century—perhaps the last—to try a peer on a charge of felony." The prognostication proved correct; but the ensuing century was still very young when Lord Halsbury had to break, once more, the white staff of the Lord High Steward, after pronouncing sentence for the crime of bigamy, committed in very extenuating circumstances, on a peer bearing the honoured name of Russell.

A barbarous and oppressive system of criminal procedure, tempered by the operation of trivial technicalities, would seem likely to produce a melancholy crop of miscarriages of justice. Such miscarriages might especially be anticipated in the case of political prosecutions, or in cases where there existed the element of superstition, or where the tide of popular prejudice ran high. It is, however, a remarkable fact

that, putting aside all questions as to the penalties imposed, cases of actual miscarriage, in the sense of wrongful convictions, appear to have been comparatively rare. Take, for instance, the trials edited by Mr. H. Stephen. His selection really includes only seven cases which may be described as essentially political; those of Essex and Lee, that of Raleigh, the trials of Charles I. and of the Regicides, that of Russell and that of Lady Lisle. Of these the worst case, in its conduct, was undoubtedly that of Raleigh. But, as Mr. Justice Stephen points out, there was something to be said, in its technical aspect, for the advice of the judges that, by the statute of Mary, two witnesses were no longer required in cases of treason; while, with regard to the truth of the charge, there was perhaps a *quantum* of proof that Raleigh had been guilty of disloyal complicity with the intrigues of Spain. It should moreover be remembered that the execution of the sentence was deferred for many years, during which he was suitably employed; he was released from custody, and owed his ultimate fate to his subsequent behaviour. As to Essex and his follower, Lee, their conduct was of course seditious; the definition by which Essex's plotting was held to be within the statute of Edward III. has been followed since and doubtless, as Stephen considers, expressed "the common opinion of the profession" at that time.

With regard to the trial of Charles I., it was of course in the legal sense no more a trial, in the proper

meaning of that word, than "martial law," in the proper meaning of the word, is law at all. It was an act of high state policy, based on the dangerous maxim, *salus populi suprema lex*. As Mr. Morley puts it, in narrating the earlier struggle between Pym and Strafford, it was a case of "my head or thy head." In the matter of the Regicides, the tables were turned. The Act of Oblivion, as a whole, was a generous measure ; the excepted cases were few ; and in most of them there was, and could be, practically no defence. In Lord Russell's case, as in that of Algernon Sydney, as Stephen remarks, "that both of these eminent persons had been engaged in a conspiracy for an insurrection there seems to be little doubt ;" and on the charge of misprision Russell scarcely attempted to deny his guilt. As to Lady Lisle, who was convicted before Jeffreys, during the "Bloody Assize" after Monmouth's rebellion, of harbouring a rebel, the impartial reader of the evidence can entertain little doubt that she must have had a shrewd suspicion of the character of her guest. The mixture of ferocity and cant with which Jeffreys treated the principal witness, one Dunne, is disgusting reading ; still more offensive, if possible, was his demeanour to the prisoner, who was the widow of a judge under the Commonwealth, and his brutal allusions to her husband's conduct on the bench ;¹ while his charge to the jury, and the

¹ LISLE.—My lord, I hope I shall not be condemned without being heard.

L.C.J.—No, God forbid, Mrs. Lisle. That was a sort of practice in your husband's time, you know very well what I mean ; but God

manner in which he bullied them into a reluctant verdict for the Crown, are typical examples of everything which a Judge should sedulously avoid. "It ought, however," observes Stephen, "to be said that Dunne was a liar, and that, striking out the brutality and ferocity of his language, Jeffreys's cross-examination was masterly, and not only involved Dunne in lie after lie, but at last compelled him to confess the truth. He wished, no doubt, to save his mistress's life, and kept back the essential part of the story till he could face it out no longer."¹

Lady Lisle's attainder was, after the Revolution, reversed by Parliament on the ground that the verdict was "injuriously extorted and procured by the menaces and violence and other illegal practices of George, Lord Jeffreys, baron of Wem, then Lord Chief Justice of the King's Bench." There was the further ground that Jeffreys had misdirected the jury, in answer to their inquiry, on a specific point, in telling them that it was not necessary that the rebel who had received aid and comfort from the prisoner should have been convicted before the latter was indicted as an accessory. The contrary view is laid down by Hale, in his *Pleas of the Crown*, a work not published when the case was tried.

be thanked it is not so now; the king's courts of law never condemn without hearing. [The allusion seems to have been to the case of Penruddock, tried by Lisle, whose son was a witness for the Crown at the trial of his widow, and one of whose descendants has recently acquired a disagreeable notoriety.]

¹ "History," I. 413.

"I doubt," adds Stephen, "whether, on the mere point of law, Jeffreys was not right."

We come next to the class of cases in which the jeopardy of the accused arose not so much from the oppression of the Crown, or the subserviency of the Bench, as from the effect of prejudice or superstition on the mind of the jury. Among the historical parallels to the Dreyfus case discussed by Mr. Sanderson are the shocking proceedings covered by the general description of the Popish Plot. As to the condition of the nation at this time, and the manner in which justice was administered, we may cite the impartial pen of Hallam. "There was indeed," he says, "good reason to distrust the course of justice. Never were our tribunals so disgraced by the brutal manners and iniquitous partiality of the bench as in the latter years of this reign. The "State Trials," none of which appear to have been published by the prisoners' friends, bear abundant testimony to the turpitude of the judges. They explained away and softened the palpable contradictions of the witnesses for the crown, insulted and threatened those of the accused, checked all cross-examination, assumed the truth of the charge throughout the whole of every trial." He proceeds, in a note, to give a few illustrations, and refers his readers to the volume of the "State Trials" covering the period, as "a standing monument of the necessity of the revolution; not only as it rendered the judges independent of the crown, but as it brought forward those principles of equal and indifferent justice,

which can never be expected to flourish but under the shadow of liberty."

In a later passage, when referring to the statute of William III., which provided that, in cases of treason, although different overt acts may be proved by two witnesses, they must relate to the same species of treason (1 William III. c. 3, sec. 4) he observes that

" Nothing had brought so much disgrace on the councils of government and on the administration of justice, nothing had more forcibly spoken the necessity of a great change, than the prosecutions for treason during the latter years of Charles II., and in truth during the whole course of our legal history. The statutes of Edward III. and Edward VI., almost set aside by sophistical constructions, required the corroboration of some more explicit law; and some peculiar securities were demanded for innocence against that conspiracy of the court with the prosecutor which is so much to be dreaded in all trials for political crimes. Hence the attainders of Russell, Sidney, Cornish and Armstrong were reversed by the convention parliament without opposition; and men attached to liberty and justice, whether of the whig or tory name, were anxious to prevent any future recurrence of those iniquitous proceedings, by which the popular frenzy at one time, the wickedness of the court at another, and in each instance with the co-operation of a servile bench of judges, had sullied the honour of English justice. A better tone of political sentiment had begun indeed to prevail, and the spirit of the people must ever be a more effectual security than the virtue of the judges; yet, even after the Revolution, if no unjust or illegal convictions in cases of treason can be imputed to our tribunals, there was still not a little of that rudeness towards the prisoner, and manifestation of a

desire to interpret all things to his prejudice, which had been more grossly displayed by the bench under Charles II."

And once more :

"There can be no doubt that state prosecutions have long been conducted with an urbanity and exterior moderation unknown to the age of the Stuarts or even to that of William ; but this may possibly be compatible with very partial wresting of the law, and the substitution of a sort of political reasoning for that strict interpretation of penal statutes which the subject has the right to demand. No confidence in the general integrity of a government, much less in that of its lawyers, least of all any belief in the guilt of an accused person, should beguile us to remit that vigilance which is peculiarly required in such circumstances." ¹

The first of the above-quoted passages was written with immediate reference to one of the Popish Plot cases—the trial of Green and others for the murder of Sir E. Godfrey—which is narrated at considerable length in Mr. H. Stephen's selection. Scroggs, who presided at the trial, had all the brutality of Jeffreys—who was then Recorder of London and one of the counsel for the Crown—without his brains ; he may be said to have displayed "the nodosities of the oak without its strength." His intimidation of the witnesses for the defence was peculiarly repugnant to all modern notions of judicial impartiality. The prisoners were convicted mainly on the evidence of an admitted accomplice, corroborated to some extent by Bedloe—the

¹ Hallam, C. H., ed. 1872, II. 426 : III. 159, 160 : 165, 166.

colleague, and rival in infamy, of Titus Oates—and, very slightly, *aliunde*. The defence evidence, after making every allowance for the treatment of the witnesses, was in the nature of a rather weak and unsatisfactory *alibi*. The murder of Godfrey will always remain a mystery; as to the conviction of the prisoners, one can only say that there was evidence to go to the jury but there must always remain the gravest doubt as to their guilt.

Mr. H. Stephen mentions that, as the result of the “revelations of Oates and those about him, thirteen men were hanged. All were improperly convicted, some were certainly, all were possibly innocent.” But, melancholy as were the consequences at this period of popular prejudice, a far more terrible toll of victims was, for many years, exacted by popular superstition. In both cases, we may exclaim, *tantum religio potuit suadere malorum*. “Rebellion,” we are told, “is as the sin of witchcraft”—which, in this enlightened age, seems to suggest that the sin of rebellion is a figment of the imagination. During the sixteenth and seventeenth centuries, under the statutes of Elizabeth and James I., there were numerous prosecutions for witchcraft and many convictions on the most flimsy and worthless evidence. Full details will be found in Hutchinson’s learned essay on the subject. The last execution for that crime seems to have been that of three women who were hanged at Exeter in 1682, a couple of years after the Popish Plot had run its course.

But there were a good many subsequent trials, and at least one conviction, and the statute was not repealed till 1736, when, by St. 9 Geo. II. c. 5, all prosecutions for "witchcraft, enchantment or conjuration" were prohibited. Hutchinson calculates that in all some 130 persons, convicted of witchcraft, suffered the extreme penalty of the law, of whom, rather curiously, the great majority were condemned under the Commonwealth and Protectorate.

Mr. H. Stephen's selection includes an interesting report of the trial of the Suffolk witches at Bury, in 1665, a trial which is generally regarded as a blot on the reputation of that eminent and virtuous lawyer, Sir Matthew Hale. Hale, says Stephen, "treated the matter not only with gravity, which indeed was his duty, but with that misplaced and misunderstood impartiality which is one of the temptations of a judge better provided with solemnity, respectability and learning than with mother-wit. His obvious duty was to see that the case was one in which two poor old women's lives were put in jeopardy by the stupid superstition of ignorant people."¹ This criticism seems to assume that Hale himself was free from the "stupid superstition" of his age. But Hale had to administer the law as he found it; he believed his Bible; and both authorities were equally emphatic as to the existence and heinousness of the offence for which the prisoners were indicted. That being so,

¹ "History," I. 380.

the positive evidence seems on perusal to have been stronger than Stephen is willing to admit; and, if Hale is to be blamed for not displaying sufficient scepticism, the blame must be shared by the eminent "expert" who was called for the Crown—no less a person than Sir Thomas Browne, the author of "*Religio Medici*," one of the most distinguished among the physicians and men of science of his own time and among the men of letters of all times.

Miscarriages of justice have unhappily from time to time occurred in cases which do not fall within any of the categories above discussed—in cases of ordinary common-law offences, where there has been, or could be, no question of intimidation by the Crown, of popular prejudice or of superstitious terror. To admit this is simply to recognise the fact that humanity is fallible. Among the one and twenty trials selected by Mr. H. Stephen it is gratifying to note that there is only one such case. In 1661¹ Joan Perry, and her two sons, John and Richard, were convicted and executed for the murder of one Harrison, the master of the prisoner John. As a matter of fact, Harrison was alive and well; by some mysterious means he had been kidnapped and carried off as a slave to the Levant, whence, after some years had elapsed, he made his

¹ This case affords a typical instance of Mr. H. Stephen's habitual inaccuracy as to dates. The case is reported in Vol. III., at p. 105. The date of the trial is given in the Table of Contents to the volume as 1690; in the heading of the case, at p. 105, as 1659; the real date, as appears at p. 119, was 1661.

escape and returned to England. The case was in every respect a most extraordinary one. The prisoners were convicted apparently entirely on the confession of John Perry himself, which he afterwards recanted, and which can only be explained on the presumption, which he himself suggested, of temporary insanity. It is obvious that in any case this confession was no evidence against the other prisoners; and, further, there would have been no conviction had the salutary rule been adhered to, requiring ocular evidence, or the finding of the body, in prosecutions for murder. On this ground, when the case first came on, the Judge of Assize, Turner, J., very properly refused to try the indictment; but at the next Assizes it was presented again before Hyde, C.J., with the lamentable result of what may well be characterised as a judicial murder.

For other miscarriages, in the case of charges of ordinary crimes, the reader may be referred to the pages of Mr. Atlay and Mr. Sanderson. One remarkable and comparatively recent case, narrated by the former, was that of Barber, a respectable solicitor, convicted in 1843 of forgery and fraud. Barber was sentenced to imprisonment for life and suffered all the horrors of transportation. His innocence was subsequently demonstrated. In 1848 he received a "free pardon" for a crime he had never committed, and, on the recommendation of a Committee of the House of Commons, of which John Bright was chairman, he was voted £5,000 as compensation for his unmerited

sufferings. There have been at least two notorious cases, in still more recent times, in England, and several in France, in which, owing to confessions of guilt by, or subsequent convictions of, the real criminals, or proof of perjury by the witnesses for the Crown, it has been established that miscarriages of justice have taken place. Doubtless others have occurred and will remain latent until the day in which all secrets shall be revealed. Cases of premature burial are seldom discovered; but there can be little doubt that, the chances of discovery being so remote, undetected cases must from time to time have actually occurred. Still, there is no reason to enhance the terrors of life, or of death, by cherishing a morbid fear that wrongful conviction of the innocent, or premature inhumation of the quick, happens in other than an almost infinitesimal percentage of verdicts and interments. A jury is always liable to be misled by perjury, especially when, as in the case of the Perrys, there is no apparent motive for giving false evidence, but every consideration of probability and natural affection points the other way; and, so long as the machinery for protecting the social fabric, like other machinery, has to be set in motion, governed and regulated by human instruments, there must ever remain a risk of blots

*quas aut incuria fudit
aut humana parum cavit natura.*

It is certainly comforting to reflect that innocent persons, when accused, had in no previous age such

effective means of protection as they now enjoy. In the British dominions, at all events, the criminal law itself, the rules of procedure and the methods of its administration, may be described as affording *insigne mæstis præsidium reis*. Prisoners are allowed, and encouraged, to tell their own story in their own way; the case of an innocent prisoner who, with such facilities, cannot show probable or even plausible grounds of defence, must be extremely rare; and when such grounds are even adumbrated, the tendency of the modern juryman is usually to give the prisoner the benefit of what are often rather slender grounds of doubt. Probably, where nothing of the kind is put forward, the real explanation, as a rule, is that the accused has reasons of his own for reticence, which may possibly in some cases be respectable, but of which he cannot blame the system if he has to accept the consequences.

Turning for a moment, in conclusion, from the question of conviction to that of punishment, it may perhaps be questioned whether the tendency of the times—and judges and juries are always more or less influenced by the trend of current opinion—is not to be a little too soft. We live in an age, not only of sensation, but of sensibility. We are perhaps rather too much inclined to find excuses for the individual, and insufficiently impressed with the social duty of making the law a terror to evil-doers. It might perhaps be desirable to have a thought more of the sterner

stuff of judges like Stephen and Bramwell and a little less of the humanitarian methods of Mr. Recorder Hopwood. At present the tendency seems to be to regard those crimes which involve no patent moral obliquity—as in the case of political offences—as scarcely crimes at all, while, where moral obliquity exists—as in the case of the amiable Hooligans—it is attributed to the unfortunate effects of atavism or the demoralising influence of early surroundings. There is much to be said for this point of view; but, after all, the victims of atavism must not be allowed to become the curse of society or to injure its respectable members with impunity. As to political offenders, the State must protect itself. Its first duty is to maintain its own existence, its own safety and independence, its dignity and honour. The less such crimes are reprobated by public opinion, the less social stigma attaches to the offenders, the more essential in some respects does it become for the State, in its own interests, and on utilitarian principles, to make it plain, so that he who runs may read, that rebellion, whether open or secret, if not to be compared to the sin of witchcraft, is at all events no trivial matter, and that “treasons, stratagems and spoils” are not merely “regrettable incidents” but proceedings which require, after due allowance has been made for the special circumstances of particular cases, the corrective influence of an administration of the criminal law which shall be both firm and just.

THE LAW OF CRIME

THE LAW OF CRIME

“A Selection of Cases illustrative of English Criminal Law.” By C. S. Kenny, LL.D. Cambridge: 1901.

“Outlines of Criminal Law.” By the same. Cambridge: 1902.

THE young advocate in this country, like the neophyte of the common law bar at home, who selects a circuit and attends sessions, will probably acquire his first practical experience of his profession in some criminal prosecution or defence. He is not likely to be briefed in any civil matter of importance till he has given some proofs of competence; but he may at any time be assigned as counsel for an undefended prisoner—probably on a capital charge—or be instructed to represent the Crown in one of the local courts. He has to acquire efficiency—sometimes at the expense of “unfortunate clients”—as best he may; if he attends the sittings regularly, and possesses fair powers of observation and a retentive memory, combined with intellectual alertness and quickness of appreciation, if he masters the facts of his cases, and consults the text-books for legal detail, with a little help from the

presiding judge and his more experienced colleagues at the bar, he ought, if well grounded in general principles, soon to find his forensic feet and before long to be able to hold his own.

Some such grounding is however essential. The principles of criminal law and procedure cannot be apprehended by intuition or grasped by rule of thumb. Unfortunately, as a rule, its importance scarcely seems to be sufficiently impressed on the ordinary student and the weight attached to it, in his academical curriculum and professional examinations, is perhaps unduly slight. There was certainly room for a good institutional treatise on the subject; and we are therefore glad to be able to direct attention to the two works mentioned above, recently published by Dr. Kenny, Reader in English Law at the University of Cambridge. For many years, Dr. Kenny has enjoyed a high reputation as a lecturer on this among other branches of the law, and by reducing the substance of his lectures to the form of a book he has performed a service for which he deserves the thanks of students unable to enjoy the advantage of such oral training. Of the two works, the "Selection of Cases" was the earlier publication; but on the whole we are inclined to recommend the reader first to take up the "Outlines," referring *pari passu*, if time permits, to the illustrative cases contained in the "Selection."

"The law of Crime," the author remarks in his preface, "is a branch of jurisprudence peculiarly

capable of being rendered interesting. It is closely linked with history, with ethics, with politics, with philanthropy. My endeavour has been to make it attractive to the reader, by supplying him with enough illustrative examples to give vividness and reality to all the abstract principles of our Criminal Law; and also by tracing out its connexion with the past sufficiently to explain the various historical anomalies with which it is still encumbered; and, moreover, by suggesting to him the most important controversies—psychological, social, juridical—that it seems likely to arouse in the future.” In this country, we have of course to remember that the English law is not always applicable, and that some of its technical distinctions—such, for instance, as that between felony and misdemeanor, or that between burglary and house-breaking—are fortunately not recognised in our procedure. The English law, again, as to larceny and forgery is somewhat narrower and more technical than the ambit of the *crimen furti* and the *crimen falsi*; neither does it include certain offences, such as incest, prohibited by our system and sometimes prosecuted in our courts. If the colonial student seeks to ascertain the precise definition of *perduellio* or *stellionatus*, he will gain no enlightenment from Stephen or Archbold, and must turn to Matthaens or Carpzovius for the necessary information. But we have taken over, speaking broadly, the whole of the English law of evidence; we have adopted, or adapted, much of the common law of

England, and large blocks of the statutory law, both as to the substance and with regard to procedure; and, so far as the law of crime is concerned, it may be said generally that the points of correspondence are so considerable, and those of diversity so comparatively infrequent, that a treatise such as Dr. Kenny's should prove almost as useful to the student at Cape Town as to the student at Cambridge, and might, we think, advantageously be included among the books recommended, under the section "English Law," to our University candidates for the LL.B. degree, which qualifies for admission to the colonial bar.

Dr. Kenny, who regards the law of crime as "a branch of jurisprudence peculiarly capable of being rendered interesting," has, we think, by the publication of his "Outlines," to a great extent proved his point. The volume, which is of moderate size and price, and neatly got up, is divided into three Books, the first containing some "General Considerations" on "the nature of a crime," "the purpose of criminal punishment"—a chapter which it would perhaps have been more logical to relegate to Book III. and consolidate with that on "The Problem of Punishment" with which it concludes—and other cognate topics. The second Book comprises "definitions of particular crimes," often copiously illustrated, usually very careful and precise, but perhaps in some cases showing some want of proportion in the relative space devoted to their treatment. The third Book is occupied with

"modes of judicial proof," as to which our principal criticism must be that, while some reference to "the general rules of evidence" may have perhaps seemed requisite, the subject is really too extensive for treatment in a single chapter of a work on criminal law, and it might have been better to assume some converseance with the main principles therein embodied. The last section of the volume is devoted to criminal procedure, and is of considerable historical interest, although many of the details are of course to the colonial student of little practical importance. While full of information, the book also affords much excellent reading. The author gives many useful references to the latest official statistics and reports, to some of the large proportion of important criminal cases which have been reported only in *The Times*, which he has evidently noted up with much care, to continental and American authorities, and, in one or two instances, to colonial cases, reported in the *S. A. Law Journal*, as well as to various illustrative incidents, at the Central Criminal Court, the Assizes and elsewhere, which have come under his personal observation. That the work has been brought well up to date is indicated by a reference to the very recent decision in the case of *R. vs. Archbishop of Canterbury*, as to the position of the Crown with regard to costs, arising out of the proceedings on the election and confirmation of the Bishop of Worcester.¹ On the other hand, the case of *R. vs. Hudson*

¹ The reference given in the "Outline" is to 1 L.R. 2 K.B., 1902 ;

and Ingham, which deals with the right of one prisoner to cross-examine another, reported in *The Times* of April 28, 1902, was probably too late for inclusion. The author, however, in a foot-note, on page 401, states the law on the subject correctly, in accordance with the decision of the Court for Crown Cases Reserved in that case, overruling that of *Ridley, J.*, on circuit.

There are many valuable legal treatises, which are at once painstaking, accurate and dull. *Ornari res ipsa negat, contenta doceri*, appears to be the customary assumption of the legal text-writer. There are others—such, for instance, as Mr. Birrell's epigrammatic epitome of that fascinating subject, the law of trusts—which are more lively but less precise. The great merit of Dr. Kenny's book is that he manages to hold the attention of his reader, and make his subject interesting by his method of treatment, without ceasing to be a trustworthy guide and accurate expositor. From substantial inaccuracies, indeed, a somewhat careful perusal, leaves the impression that the work is singularly free. It is perhaps hypercritical to point out, as a matter of history, that Lord Cardigan was tried, not, as stated in a note at p. 417, "for killing Captain Tuckett in a duel" but for feloniously shooting at him with intent to do bodily harm. On a point of more substance, it may be observed that the denial by the author to the Crown of the right of peremptory challenge, in cases of

the Report will be found in the October part, at p. 503, published subsequently to Dr. Kenny's book.

felony, though technically correct, is practically rather misleading, and may seem surprising to those who have followed criminal procedure in Ireland. The parenthesis in a subsequent note (p. 475, note 6), apparently referring to another subject, scarcely gives sufficient prominence to the qualification of the statement in the text. The fact is that the Crown can challenge without showing cause, and is required to give reasons only when the entire panel has been exhausted, and after the challenges for cause of the defence have been examined and allowed. The practice at the Cape of allowing both the Crown and the defence, in all cases, three peremptory challenges, and three only, is well established. The right is appreciated, it is often exercised—sometimes, we fear, on the principle avowed by Maitre Lachaud, "I challenge every man who looks intelligent"—and causes little inconvenience. Once more, we should have liked some authority for the statement, on p. 119, that "slight provocation reduces the act of killing with a trivial instrument, such as was likely to give only pain and no wound, to mere misadventure." According to Stephen, "provocation does not extenuate the guilt of homicide unless the person provoked is at the time when he does the act deprived of the power of self-control by the provocation which he has received;" while Archbold lays down that "no provocation whatever can render homicide justifiable, or even excusable; the least it can amount to is manslaughter." If a trivial assault, the result of a similar

provocation, has a fatal sequel, we doubt whether it can ever, strictly speaking, be less than manslaughter, or culpable homicide, although in such circumstances the sentence imposed would probably be merely nominal.

These however are *minutiæ*. More debateable perhaps is the author's interesting analysis of the nature of crime and of the question to what extent a guilty mind is a necessary ingredient. In dealing with the former topic, and showing the inadequacy of various definitions which have been propounded by jurists of repute, Dr. Kenny is evidently a good deal embarrassed by the anomalous class of "penal actions," in which penalties are recoverable by civil process, and payable either to private individuals, who play the part of "common informers," or, in the *qui tam* cases, partly to the informer and partly to the Crown, or, in certain instances, are recoverable by the State alone. In one case, it may be remembered, the penalty, which was to be divided, was fixed by the parliamentary draftsman at £500; it was changed, in Committee of the House of Commons, to twelve months' imprisonment; but as the words "of which half shall go to the Crown and half to the informer" were allowed to stand, informations under that particular statute were conspicuous by their absence. This form of legislation may however be regarded as obsolescent and should not be allowed to exercise a too obstructive influence on the work of definition. As things are, Dr. Kenny is reduced to suggesting that a crime is "an act which gives rise to

that kind of procedure which is styled criminal." This does not carry us very far, and must be taken subject to the qualification that most crimes are also torts and are therefore acts which may give rise to civil procedure as well. The best definition which can be suggested is probably that indicated by Austin, who laid down that the distinctive attribute of criminal procedure consisted in the fact that "its sanctions are enforced at the discretion of the Sovereign." As our author observes, this is also to some extent the case with regard to penal actions, which are the subject of *quasi*-criminal procedure; but, speaking broadly, we may define a crime as "an act or omission prohibited by a sanction remissible, if at all, by the Crown alone." Dr. Kenny points out that there are two offences, that of an unabated public nuisance, and that of deportation of prisoners beyond the seas, which,¹ the former by the common law, the latter under the Habeas Corpus Act, even the Sovereign cannot pardon. The latter practice, had it not been for recent experience in South Africa under martial law, might have been regarded as an obsolete infringement of the liberty of the subject; after the decision of the Judicial Committee in the case of

¹ Dr. Kenny says "outside the realm;" but the statute enacts "that no subject of this realme that now is or hereafter shall be an inhabitant or resiant of this kingdome of England dominion of Wales or towne of Berwicke upon Tweede shall or may be sent prisoner into Scotland Ireland Jersey Gaurney Tangier or into any parts garrisons islands or places beyond the seas which are or at any tyme hereafter shall be within or without the dominions of his Majestic, &c."

R. vs. Marais, it may perhaps be described as an expedient which was both inconvenient and superfluous.

As to the old proposition that there is no *actus reus* in the absence of a *mens rea*, we think Dr. Kenny clings to it with an affection which leads to some straining of both language and common sense. He lays down that "even where one man's *mens rea* makes another become liable, a *mens rea* is still necessary. . . . It is, as we have said, only in rare instances that any less degree of *mens rea* than the ordinary one is allowed by law to suffice, and clear words are always necessary to establish that sufficiency." He refers to the well-known case of *Sherras vs. De Rutzen*; but the principle there laid down, in the instructive judgment of Wright, J., was that "there is a presumption that *mens rea*, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered." ¹ To say, as Dr. Kenny puts it, that a person selling an adulterated article of food, though not knowing it to be adulterated, possesses a *mens rea*, as "he must have actually known that he went through the act of selling," seems to be really a distortion of language. Mr. Justice Wright, as it seems to us more

¹ L.R., 1 Q.B.D. '95, at p. 921, quoted in Kenny's Selection, p. 32. The most recent case on the subject, which may usefully be compared, is *Brooks vs. Mason*, 2 K.B. '02, 743.

accurately, in the judgment cited above, describes offences under the Adulteration Acts as falling under the class of acts, of which he gives various examples, which, in the language of Lush, J., in *Davies vs. Harvey*, "are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty." To put the matter broadly, we should be disposed to suggest a dichotomy between what are known as *mala in se* and *mala prohibita*; in the former class, the *mens rea* is of the essence of the offence, but not in the latter, if the Legislature has thought fit to affix the sanction to the commission of the act, or the contravention of the prohibition, apart from any question of the frame of mind of the perpetrator. It need scarcely be added that, while the absence of a *mens rea* may sometimes be immaterial, there must always be an *actus reus*. David Garrick, who was possibly acquainted with the Paradox of his contemporary Diderot, evidently differed from the famous thesis of that philosopher. He once asserted that, whenever he acted Richard III., he felt like a murderer; "then," retorted Johnson, "you ought to be hanged whenever you act it." Johnson however, as Dr. Kenny observes, spoke as a moral philosopher; "there is no such searching severity in the rules of law." A colonial politician has recently been sharply criticised for asserting in Parliament that he saw no harm in secret rebellion. No doubt he drew a distinction between mental phases and overt acts and spoke as a criminal lawyer, and not in

accordance with the high standard of "moral philosophy" inculcated by Dr. Johnson.

In connection with the question of the mental element in crime, one of the most instructive chapters in Dr. Kenny's book is that in which he discusses the defence of insanity and traces the gradual evolution of the doctrine as to the exemption from responsibility on that ground. On the question of an "insane impulse" he says

"How far an insane impulse to do an act is to be regarded as affecting the criminal responsibility for doing it, is a question which is not yet definitely settled. In the United States both the Supreme Court and the courts of almost all the States recognise irresistible impulse as being a sufficient defence, even when accompanied by a knowledge that the act was wrong. In England, however, the balance of authority is the other way. In several cases (coming down to so recently as the year 1882) it has been held that an insane impulse, even when uncontrollable, affords no defence. On the other hand, the authority of Sir James Stephen and the dicta of other judges support the view that an insane impulse should be admitted as a defence if really irresistible (not merely unresisted), because then the act done would not be a 'voluntary' act at all."

It will be remembered that the topic was fully discussed in 1899 in the Supreme Court at the Cape, when it was laid down in a considered judgment (*R. vs. Hay*, 16 S.C., 290) that

"Where the defence of insanity is interposed in a criminal trial, the capacity to distinguish between right

and wrong is not the sole test of responsibility in all cases.

"In the absence of legislation to the contrary, Courts of law are bound to recognise the existence of a form of mental disease which prevents the sufferer from controlling his conduct and choosing between right and wrong, although he may have the mental capacity to distinguish between right and wrong.

"The defence of insanity is established if it be proved that the accused had, by reason of such mental disease, lost the power of will to control his conduct in reference to the particular act charged as an offence."

This decision seems to be quite in accordance with the view taken in the United States and with what appears on the whole to be the present tendency of the English courts. In this and many other passages Dr. Kenny has made good use of his familiarity with the American practice and theory of the criminal law. "I heard it stated," he mentions in another place, "in 1888, in a law-lecture at Harvard, that the benefit of clergy still survived in North and South Carolina. The survival is perhaps connected with the educational gulf between the white and the coloured criminals." We have no benefit of clergy at the Cape, but a tendency, on the part of juries, to discriminate in the measure dealt out to white and coloured criminals is perhaps not unknown. If we turn from South to North Africa, we are informed by Dr. Kenny, on the authority of Churchill's "Life of Abd el Kadr," that "by a singular coincidence even the Arabs of modern Algeria have

recognised learning as a ground of criminal immunity.” The limits of space preclude further quotation; we have said enough to indicate how multifarious is the information, the result of wide reading, careful research and contemporary observation, with which the author has enriched a work which should find a place in the library of every student—from the member of “the great unpaid” to the youngest candidate for a degree in law—of the important and interesting subject which forms its theme.

THE SCARLET ROBE

THE SCARLET ROBE

"La Robe Rouge." Pièce en quatre actes. Ouvrage couronné par l'Académie Française. Paris: Stock. 1901.

AMONG the various branches of comparative jurisprudence, none perhaps is more interesting than the study of the evolution, history and practical working of the systems of criminal procedure adopted by different civilised countries. The English lawyer, in investigating such matters, should be on his guard against assuming the attitude of the Pharisee in the parable. He should remember that his own organisation, both executive and judicial, is far from perfect or definitive—otherwise what would be the excuse for the annual crop of statutes or the *raison d'être* of the Legislature?—and that what may be suitable for Great Britain, or this or that British Colony, would not necessarily produce equally beneficial effects if adopted in France or in Ireland—in Barataria or in Erewhon. It must, however, be confessed that the Briton may find some ground for his habitual self-complacency in the discriminating approval of many foreign critics

and particularly of some of the most competent among the jurists of France. Some years ago, when reviewing in these pages M. de Franqueville's "magistral" work on the judicial system of Great Britain, we took occasion to draw attention to some of the salient points of contrast with that of France, in which, in the opinion of the author, the English system was distinctly preferable;¹ and a similar impression is produced by a study of M. Cruppi's very able work on *La Cour d'Assises*,² of which we have recently derived advantage from a second perusal. M. Cruppi, himself an eminent member of the Paris bar, gives an account of the French criminal system, characterised by admirable lucidity, full of information and practical suggestion, and illustrated, for purposes of comparison and contrast, by much careful study of the practical working of the methods in force in England, Germany and Belgium, in Italy, Portugal and Spain, and of the views adopted by the most eminent authorities on the subject in those countries. He is rather on his guard against the accusation of "Anglomaniæ," and admits that many customs and institutions which work well in England would prove unsuitable to the French character and temperament; but in the organisation of the English bench and bar, and the fashion in which trials are conducted, he finds much which, *mutatis mutandis*, he would be

¹ "The Judicial Systems of England and France:" *Cape Law Journal*, XII. 1: "Collectanea," 226-241.

² "La Cour d'Assises," par Jean Cruppi. Paris: Lévy. 1898.

glad to see transplanted from the banks of the Thames to those of the Seine. M. Cruppi's volume deals mainly with the Assize Court of Paris. In France there is an Assize Court, with a President, specially selected for every Session, at the seat of every Court of Appeal, and there is a Court of Appeal in all the large centres of population and at some places of inferior importance. But, while the Assize Court of the Seine should serve as a model to the rest of the country, many of the abuses which M. Cruppi signalises, of which he deplors the consequences, and for which he seeks a remedy, sometimes in the adaptation of English methods, sometimes in an attempt to transplant some of the institutions of the German Empire, naturally attain their zenith in the small provincial courts, where the officials are less amenable to the control and scrutiny of an able bar, an influential press and a strong current of public opinion. They have recently furnished the theme for a powerful play, by M. Brieux, which has received the honour—somewhat unusual for a dramatic work—of being “crowned by the French Academy.” In “*La Robe Rouge*,” as in another recent play, “*Les Remplaçantes*,” M. Brieux has displayed considerable ingenuity in combining the art of the dramatist with the aims of a social reformer. “*The Scarlet Robe*” has been acted, during the last two years, with great success, and with the incomparable Réjane in the principal rôle, both at Paris and in London; and it may safely be surmised that, for one student who has read the instructive

dissertation of M. Cruppi, a hundred playgoers will have found food for reflection in the drama of M. Brieux.

All over the civilised world, at the present day, there seems to be a tendency to criticise the working of the system of trial by jury. As the Prince Consort, with Baron Stockmar for his mentor, once asserted of the British Constitution and the Parliamentary system, trial by jury, it may be suggested, is itself "on its trial." In some countries there is a marked inclination to substitute for it trial by a single judge or magistrate, or by a tribunal consisting of such an officer, assisted by assessors and, in some cases, by experts. In the Cape Colony, the effect of the Act of 1885 has been to remit to the magistrates for decision a large proportion of the cases which formerly came before a judge and jury. In France, a similar result is produced by the system known by the barbarous name of *correctionnalisation*. According to the French theory, offences are classified as either *crimes*, *délits* or *contraventions*. Crimes go to the Assizes; *délits* are dealt with by the correctional tribunals and mere *contraventions* by the Commissaries of Police. The present tendency is, whenever possible, for the Parquet—the department intrusted with the investigation and prosecution of crime—to treat minor crimes as delictual (ignoring, when necessary for that purpose, some element of the offence) and send them for trial to the "Tribunaux de police correctionnelle" instead of to the Assize Court. As M. Cruppi points out, in a recent year the Assize Courts

throughout France tried less than 3000 indictments, while the Correctional Tribunals disposed of nearly 200,000 cases. It will thus be seen that the process of *correctionalisation* in France has produced effects very similar to those of the system of remittal by the law-officers of the Crown in vogue at the Cape.

It cannot be denied that dissatisfaction with the working of trial by jury, as well as considerations of economy and expedition, has been an element in producing these results. In France such dissatisfaction, among jurists and many other thinking men, extends from the methods of selection and characteristics of the jury to those of the President, and covers the whole ground of their mutual *rappports*. It may be conjectured that the popularity of the problem-play of M. Brioux, and the discussions to which it has given rise, will not tend to allay this feeling. The most important *rôle* in the Assize Court is played by the President; and objections are taken, on apparently substantial grounds, to the method by which he is appointed, to the position he occupies and the functions he is expected to perform.

The President of the Assize Court is selected for each session from among the numerous counsellors attached to the various Chambers of the Court of Appeal. As a rule, these gentlemen are occupied with civil work, to which, as a more dignified occupation, they are anxious, as soon as possible, to return.

At the same time, there is often a hope that energy, zeal and tact, displayed in presiding at the Assizes—roughly tested by the percentage of convictions obtained and the absence of “regrettable incidents,” or errors in procedure, involving “annulment” by the Cour de Cassation—may lead to promotion to a higher sphere of usefulness. The nomination of the President is to a great extent controlled by the Parquet; the opinion of the Parquet exercises a material influence on his prospects of advancement; and the Parquet is represented at the trial by the Avocat-Général, who sits beside the President and his Counsellors on the bench, enters and leaves the Court by the same door, wears, like them, the scarlet robe, and is often a more highly paid official, occupying a more elevated position in the official hierarchy. We must always remember that a French Judge is not selected from the bar; he is, from the beginning of his career, a civil servant, the Magistracy being divided into two sections, the *magistrature assise*, who act as judges, and the *magistrature debout*, who act as prosecutors, and being only partially in touch with the order of advocates. The President of the Assize Court, seldom well versed in criminal work, always poorly paid, much under the influence of the Parquet, largely dependent on its good-will for advancement, and liable, should he give offence in powerful quarters, to be transferred to some less congenial sphere of work, certainly does not possess those guarantees of independence which we are wont to

regard as essential to the due discharge of the onerous functions of a Judge. As M. Cruppi remarks :—

“ Si, dans une nation, la liberté du magistrat n'est point évidente, intégrale, cette nation peut bien avoir les agents les meilleurs, les meilleurs fonctionnaires, cette nation n'a point de juges. Hume a pu dire ‘que les flottes de l'Angleterre, sa puissance, sa monarchie et ses deux Chambres n'avaient qu'un but : maintenir la liberté des quinze grands juges du banc du roi.’ Dans sa forme emphatique, l'idée est belle et juste, et l'on peut affirmer que la liberté civile et politique n'est fondée chez un peuple que le jour où il veut, de volonté opiniâtre, ce qui garantit tout le reste : des magistrats indépendants.”

Similarly, with regard to the *magistrature debout*, and the sinister influence of the quest for promotion on the attitude and conduct of its members, we may perhaps venture to cite the testimony of another distinguished French lawyer, who has written some remarkable stories, based on facts within his own experience, illustrative of the system and its effects. In the course of a private letter, addressed to the present writer, he explains :—

“ J'ai voulu dans cette nouvelle indiquer les souffrances et les malheurs que peut semer sur sa route un juge affolé d'ambition et voulant parvenir à tout prix. Or en France il est trop fréquent qu'une extrême rigueur chez les Procureurs de la République leur vaud de l'avancement, car les députés, qui sont très influents, vont demander au ministre l'éloignement de telle ou telle ville du magistrat détesté pour sa rigueur. Ne pouvant ou n'osant lui donner un poste moindre, le ministre lui donne un poste supérieur.

. . . . Cette histoire, vraie dans tous ses détails, s'est terminée par la mort d'un pauvre brave homme, qui s'est suicidé au moment où le procureur allait le faire arrêter. Ce procureur est devenu Conseiller à la Cour de Cassation. D'ailleurs il y a eu une fin tragique. Il est mort fou et dans sa folie revoyait les victimes de son affreuse rigueur."

Let us now consider for a moment in what the judicial functions, referred to by M. Cruppi, consist and how they are exercised, whether at the Paris Court or, shall we say, at the Assize Court of Mauléon, a third-class magistracy in the neighbourhood of Bordeaux, and the scene of M. Brieux's play. The President, to use a colloquialism, is expected "to run the show." Having before him the indictment—a long, argumentative and rhetorical document, reciting everything known or suspected to the detriment of the accused, and based on a minute investigation of his *dossier* or antecedents—the depositions and other results of the preliminary investigation, the President, after a careful preliminary study of these papers, begins the proceedings with the *interrogatoire*, or examination, of the accused himself. The French system of criminal procedure, as we must always bear in mind, is, to adopt the phrase of Mr. Justice Stephen, not, like ours, "contentious" in its methods—a conflict between the Crown and the accused, with the burden of proof imposed on the former—but "inquisitorial" in its character, with the presumption to a great extent reversed. After the President has concluded the *interrogatoire*—often very prolonged and

exacerbated, with the object of demonstrating the culpability of the accused or extorting admissions inconsistent with his innocence—he proceeds to examine the witnesses. It is not considered in accordance with etiquette for the *avocat-général* frequently to intervene, and the liberty to do so of the prisoner's counsel is restricted within narrow limits. The evidence being concluded, the *avocat-général* makes his speech for the prosecution or *réquisitoire*, and counsel for the defence then has his chance with his *plaidoirie*, in which he is allowed fairly free scope. The proceedings used to terminate with a *résumé*, or summing-up, by the President ; but this right was so much abused, and the *résumé* so often proved little more than a second speech for the prosecution—as M. Cruppi remarks, the *interrogatoire* was to the *résumé* much as a proof before letters to an ordinary engraving—that it has been abolished by the Legislature. The defence as a rule—and subject to certain rights of reply, in special circumstances, of the *avocat-général*—has the last word ; and, if the case is one of a *crime passionnel*, or other matter giving scope for ingenious rhetoric or glowing declamation, and the advocate is sufficiently skilful and makes the most of his materials, the result is often a verdict for the prisoner in the teeth of the facts. M. Cruppi points out that, in England, where the case is summed up by an impartial and experienced Judge, whose rôle during the trial is mainly a silent one, and who plays throughout the part of a "moderator," the proportion of

acquittals in trials by jury is far smaller than in France, where the scarlet robes of the President and the *avocat-général* invest functionaries sitting cheek by jowl, who seem to be in as close touch mentally as physically, and who resemble one another as much in their attitude as in their garb.

Let us now see how the system works out, in practice, at Mauléon, as depicted on the boards of the Vaudeville, by Mme. Réjane and her colleagues in the representation of the drama of M. Brieux. The curtain rises in the modest *salon* of Mme. Vagret, wife of the district prosecutor. The Assizes are drawing to a close and she is about, in accordance with custom, to give an official dinner in honour of the President. Meanwhile she is much distressed by the attacks in the local press on the want of zeal of the local *parquet*. A sensational murder has been committed and, though there have been several arrests, no real case has been made out against anybody. One of the Mauléon papers is published in French and one in Basque—it will be remembered that we are in the Department of the Pyrenees—and Mme. Vagret's nervousness is enhanced when she learns that the *Procureur Général*, or State Attorney, has translations sent to him of all the articles in the latter which reflect on the local officials. She tries to get her servant-girl to translate an article for her, but soon finds it advisable to relinquish the experiment. There is an allusion to Mauléon as a sort of legal Biribi which puzzles them both. Meanwhile, she is distracted by the

carrière of the circuit dinner—nine persons to entertain at an uncertain hour, “after the rising of the court.” Mme. Vagret earnestly dissuades her daughter from ever marrying a magistrate:—

“Look,” she says, “at your father. District prosecutor, before a third-class tribunal, because he doesn’t intrigue, doesn’t know how to get the support of the politicians. Yet it can’t be denied he is an able man. Why, since his appointment, he has obtained three life-sentences, and that too in a place where crime is terribly scarce! Isn’t that creditable? It is true that we have had two acquittals during the present Assizes; but, after all, that is simply a bit of bad luck. And for defending society as he does, what pay does he draw? After the pension deductions, it comes to just 395 francs, 83 centimes a month.¹ And on that he has to entertain the Circuit Judge! . . . If only they could arrest that wretched murderer! Then we might hope, just for once, for a capital conviction! Your father, when they woke him early one morning with the news of the crime, exclaimed, as he squeezed my hand, ‘This time I think my nomination as counsellor is secure!’ And now all our hopes are dashed to the ground because they can’t lay their hands on the assassin!”

M. Vagret comes in and makes things worse by informing her that the last man arrested on suspicion has been released for want of evidence. His wife finds fault with the *juge d’instruction*, or examining magistrate.

¹ About £190 a year.

“ Ah ! ” she exclaims, “ *les juges d’instruction, ça devrait être des femmes !* ” In reply to an inquiry, he tells her that he has just seen the *Gazette*, and a colleague has been appointed *avocat-général* at another tribunal of higher rank—a junior colleague, but the cousin of a member of Parliament. Mme. Vagret quite breaks down, and reproaches her husband for his want of push. She speaks in the interests of society. If independent and capable magistrates allow themselves to be passed over, what will be the future of the magistracy itself ? Other recent instances of promotions, due to political influence, are being discussed when the servant enters. On the occasion of the circuit dinner, the linen-room has been converted into a cloak-room for the guests, and she wants to know where she is to put a parcel which she is carrying in her hand. The parcel contains the scarlet robe, which Mme. Vagret had bought for her husband two years before, when his appointment as *avocat-général* had seemed assured. “ However carefully,” she sighs, “ I pack it in naphthaline, the moths are bound to get at it before you put it on ! ” He tries it on to see whether it still fits. “ Oh,” says his wife, “ those things fit everybody—and it means an extra thousand a year.” With sons to educate and a daughter to marry, one can appreciate the importance of the scarlet robe, thus reduced to its denomination in francs. Mlle. Vagret comes in and for a moment, seeing the robe, believes that her father has got his promotion. The disillusionment is prompt and painful. M. Vagret

reflects that, had he only the right to wear the robe of scarlet, it would add immensely to the effect, on the mind of the jury, of his *réquisitoire* in the case of the murderer who, for the nonce, persists in refusing to allow himself to be discovered !

Some of the guests arrive. The Court has just risen and the news is bad. There has been another acquittal and the President is said to be furious. A note from him is brought in. He asks to be excused on the ground of indisposition and has left by the evening train. It is feared that his report to the Minister will have a deplorable effect on the prospects of the local tribunal and the local Parquet. The circuit dinner, in the absence of the principal guest, must have proved rather a depressing entertainment. But there is just one consoling element. M. Vagret has handed over the *instruction* in the pending case to another judge, M. Mouzon, who guarantees the arrest of the assassin within the next three days ; and the party drink to his success in a bottle of the oldest *cru*.

The curtain rises for the second act in the chambers of M. Mouzon, who has undertaken the *instruction* of the mysterious murder. A man and his wife have been arrested and some information as to the antecedents of the latter has just arrived from Paris. As he is about to examine it, he receives a visit from the local deputy, Mondoubleau, with whom he exchanges a few words about the affair. He proceeds to open the *casier judiciaire*, or record of previous convictions, of the

accused, a Basque peasant named Etchepare, which has been received from Pau. He opens the parcel, as the deputy observes, with rather a curious paper-knife. He explains that it is a sort of "deodand"—the blade of the knife with which a woman—*la belle Toulousaine*—had been assassinated at Bordeaux; it was he, Mouzon, who had extorted certain admissions from the assassin which had sent him to the guillotine: and he had had the knife mounted as a souvenir of that *cause célèbre*. The *casier judiciaire* proves satisfactory; four convictions for assault. The information from Paris is also useful; the wife, Yanetta, before her marriage had been sentenced to a month's imprisonment for receiving stolen goods. It appears, in the sequel, that, at the age of sixteen, she had been seduced by the son of her employer, who had run away with her—and with some of his father's property, for receiving which she had been convicted. She had returned to her home in the south, where she afterwards married Etchepare, men of whose race attached supreme importance to the chastity of their women, and from whom she had concealed her early fault. Her conduct as a wife and mother—they had two children—had always been exemplary. The *rôle* of Yanetta is played by Mme. Réjane.

As to the prisoner, the report about him was less favourable, and there were some suspicious circumstances. The murdered man was very old. Etchepare, some years before, had bought from him a vineyard for

a life-annuity and declared that he had been swindled. He was understood to have recently been borrowing money and the annual payment was nearly due. The deputy, Mondoubleau, is impressed by Mouzon's perspicacity; and it turns out that the former is on intimate terms with the Minister of Justice, an old comrade from the days of the Commune. It chances that Mouzon's politics coincide with those of Mondoubleau, while unfortunately Vagret is in the opposite camp. Mondoubleau happens to notice on the table the *dossier* of one of his best election agents, whom, as he has learnt with regret, Vagret is prosecuting on a charge based on the flimsiest evidence. Mouzon mentions that he proposes to make a careful study of the papers in that particular case; and the deputy, whose visit is thus explained, like the proverbial postscript to a lady's letter, brings the interview to an end. As soon as he has turned his back, Mouzon orders the immediate release of his *protégé*, and proceeds to examine the witnesses in the case of Etehepare. After bullying into a state of hopeless confusion a witness for the defence, he sends for the prisoner himself, who has been kept in secret confinement for some days.

One of the most salutary reforms in French criminal procedure effected in recent years is that which permits an accused person, when examined by the *juge d'instruction*, to be represented by his legal adviser.¹

¹ " Cf. *Cape Lane Journal*, XIV. 174, note: Cruppi. " *Cour d'Assises*," 116, note.

In "The Scarlet Robe," Etchepare has no advocate; but, before he is examined, a note is taken that his advocate has been summoned by registered letter, the receipt for which is produced. These formalities having been duly observed, Mouzon proceeds to display his skill in extorting admissions and suggesting that, by a frank confession and sincere repentance, the prisoner may obtain "extenuating circumstances" from the jury. He proceeds to examine him as to his movements on the night in question and, by inventing statements to which he pretends that witnesses have deposed, and afterwards cynically avowing that they were inventions, succeeds in involving his victim in a web of contradiction. Etchepare declares that, after eight days in solitary confinement, he has lost his head. All he knows is that he is innocent but that he feels half inclined to confess his guilt if only to be left in peace! He is sent back to his cell and Mouzon summons Yanetta.

Yanetta is warned, as a preliminary, that any evasiveness on her part will probably lead to her own arrest as an accomplice. Mouzon soon shows that he has her in his grip by his knowledge of the fault of her girlhood, which she has concealed from her husband. She implores him not to disclose the secret, which would make Etchepare abandon her and deprive her of her children on his release from custody. She promises to endeavour to persuade him to be candid in his answers. Etchepare is recalled and the husband and wife

are confronted by the judge. A painful scene ensues. She appeals to him, for the sake of their children, to be frank. Etchepare reproaches Mouzon with trying to get his wife, in the name of their little ones, to send him to the guillotine, and prays that God may kill them if he is guilty. Yanetta, now fully re-assured as to his innocence, denies some of her former statements on finding that they do not agree with those made by the prisoner himself. Mouzon then sends Etchepare back to his cell and orders the arrest of Yanetta herself on a charge of complicity. "Ah!" she exclaims, "I see you are furious at your failure. You have done all you could—short of roasting us on a slow fire! You pretended to be friendly, you spoke gently—and all the time you wanted to make me send my husband to the scaffold. That is your business, to purvey heads to be cut off! At any price, you must have convictions. Once in your clutches, a man is lost. He may be innocent when he comes in, but he must be proved guilty before he goes out. That is your business, you glory in it! You put questions which seem harmless—and which send a man to kingdom come; and when you have made your victim condemn himself, you feel the glee of a savage!" The dramatic art, to be vivid, must always accentuate reality; effects must be "charged" in the glare of the foot-lights; but, if M. Brioux's description of an *instruction* at Mauléon contains any element of truth, if it has any foundation in actuality, it seems clear

that the whole system is in need of further and radical reform.

In the third act, we come to the trial of Etchepare. The case is nearly over, and the *réquisitoire* of Vagret has been followed by the *plaidoirie* of an eminent advocate from Paris. The latter has sat down amid applause, two of the jury have been seen to wipe their eyes, and Mme. Vagret is terribly afraid that the upshot will be another acquittal. The scene passes in the chambers, adjoining the Court, of the District Prosecutor. The President enters, anxious to be assured that there has been no technical error, and alarmed at hearing of the presence of a reporter from Paris, who had not been accommodated with a convenient seat! The next arrival is the Departmental State Attorney, who is passing through Mauléon and has in his pocket the appointment to a vacant judgeship at Pau, which he proposes to offer to Vagret. Mondoubleau drops in and urges the claims of Mouzon. Mouzon however has got into disgrace by a discreditable escapade at Bordeaux, and is only saved from dismissal by his friend the deputy, who suggests that his transfer to Pau will prevent a scandal and may strengthen the claims of the State Attorney himself, who is anxious for his own transfer to another Department. Vagret meanwhile has been doing himself no good. He had made, it appears, a really masterly reply, ending with a glowing peroration, in which he demanded the head of the criminal, as an exemplary

measure, for the protection of society at large, as represented by the members of the jury, the wives of their bosoms, their tender offspring, their hearths and homes. The advocate from Paris is supposed to have been crushed. Vagret and his wife are congratulated by everybody, including the President, who modestly admits that his own *interrogatoire* may have contributed to the anticipated result. But, at the last moment, as the jury were about to retire, Vagret's conscientious scruples have led him to apply for a short adjournment. Certain facts and incidents, favourable to the accused but overlooked by the defence, have raised a doubt in his mind, which he thinks should have been communicated to the jury. They had apparently escaped the attention of the advocate, who had not exercised his privilege of claiming the last word. Vagret, in these circumstances, consults the President and the State Attorney, who both favour a policy of masterly inactivity. The latter will accept no responsibility and from his attitude it is clear that Vagret's chance of promotion has not improved. There ensues a painful scene between the District Prosecutor and his wife. He explains to her that he had failed to draw the attention of the jury to certain points on which he had anticipated that the defence would rely. The omission is one which, at the last moment, notwithstanding all the influences brought to bear on him, he deems it his duty, as an honest man, to repair. The sitting is resumed. Vagret speaks once more in

the sense he has indicated; and the verdict, after a prolonged deliberation, is in favour of the accused.

The next scene is between Vagret and the President, as the latter is about to leave to catch his train. The President is not in a good humour, but consoles himself with the reflection that, when there is an acquittal, there is no risk of an appeal on the ground of errors in procedure. Vagret, whose nerves are unstrung, tells him that, in the course of his *interrogatoire*, he has done an irreparable wrong, by revealing to Etchepare that his wife is a woman with a past. Meanwhile, Etchepare is saying the same thing to the officer of the Court. He is acquitted, it is true, but his home is ruined. The news of his wife's *faux pas* has struck him as a thunderbolt; he ascribes to it all his misfortunes; it is the one thing which a Basque can never forgive. He now learns from his old mother that his home has been broken up; the neighbours refused to speak to her, and she was obliged to take the children from school, where they were insulted. They decide to emigrate to Brazil, explaining to the children that Yanetta is dead. There follows another powerful and harrowing scene between Etchepare and Yanetta, who in the end agrees to the separation on his swearing never to reveal her shame to the children of her womb.

Mouzon, meanwhile, instead of being ignominiously dismissed, as the State Attorney had proposed, for his misconduct at Bordeaux, finds himself, through the

influence of Mondoubleau, in possession of the coveted promotion to the bench at Pau. There was a charge pending against Yanetta for insulting, during the *instruction*, this worthy magistrate; but, on the suggestion of Vagret, he magnanimously decides to withdraw his complaint; he does not care about coming over from Pau to pursue the business. Yanetta is summoned to his chambers to be informed of his clemency. She does not, however, receive the announcement in a becoming spirit. Mouzon, she thinks, has been her curse. He has ruined her home, her family life, her whole existence; and the law gives her no redress.

"Ah!" she says, "and so you are not responsible! And so you are at liberty to arrest people, on the barest suspicion, to sow shame and dishonour in the life of families, to torture the unfortunate, to rip up their whole life, to revive the memory of the buried past. With your artful devices and tricks, your ferocity and your lies, you can send a man to the foot of the scaffold and—worse still—rob a mother of her children! And then, like Pontius Pilate, you explain that you are not responsible! Not, perhaps, in the eye of the law, but in the eye of justice, in the sight of honest folk, before the judgment-seat of God, I say that you *are* responsible, and I call you to your account!"

Meanwhile, Mouzon has turned his back on her. She takes up his famous paper-knife, the knife with which *la belle Toulousaine* had been assassinated at Bordeaux,

the knife of the murderer whom Mouzon had tricked into admissions which sent him to the guillotine, the knife which he had had mounted as a souvenir of that *cause célèbre*. He fails to observe her gesture and, on a renewed appeal, repeats that he owes her nothing. "You owe me nothing! You owe me more than my life, more than everything. I shall never more see my children, never again hear them call me mother. It is as if they were dead, as if you had killed them. You—you evil judge—you have all but made an innocent man a murderer and of an honest woman, a good wife and happy mother, you have made—a murderess!"

And the knife—that famous deodand—does its deadly work, and, for the last time, the curtain falls. There is still a vacancy on the bench at Pau; but we scarcely think that Vagret, even now, will have the chance to don his scarlet robe. Mouzon will probably be replaced by another friend of Mondoubleau; and Mme. Vagret will have to renew her supply of naphthaline.

THE UNFINISHED WILL

THE UNFINISHED WILL¹

I

WHY have I never practised? It would take too long to tell you— I should have to explain all the circumstances of that forgery case, all the anxiety it caused me, my suspense before the verdict, all the self-reproach which I experienced when I attributed the result to my misdirected zeal.

You still want the story? Well, you shall have it. In point of fact, while I never speak about the case, I am constantly thinking of it. Twenty years have elapsed and it still haunts me. I may say that it has been the scourge of my life, for it has taken away all my self-reliance. Perhaps it will do me good to make a clean breast of it.

I was reading at Caen for my degree as doctor of laws and had just been called to the bar. Caen is supposed to be a dull town, but I did not find my time drag on my hands. There was a doctor there, a friend of my father, house-surgeon at the hospital, who had made a speciality of diseases of the nervous system.

¹ From the French of M. M^{me} n-Forstier

I was myself of delicate health—as a youth I had been a somnambulist—and I wished to acquaint myself with the literature of the subject. I borrowed some books from the doctor—and surprised him by scrupulously bringing them back! In the end he permitted me to use the hospital library which, thanks to him, was well supplied with works on the pathology of the nerves. Gradually I got into the habit of spending more of my time on the study of certain branches of medicine, and especially of hypnotism, where it verges on occultism, than on that of law. Hence I was rather annoyed when one day the leader of the local bar, M. de Chamboucy, sent for me and informed me that he proposed to send me to the Channel Circuit Court to defend a notary on a charge of forging a public will. I pleaded my want of experience and asked why I should be selected in such a serious case, that of forgery by an officer of the Court, whose conviction might entail a sentence of penal servitude.

“My choice,” he replied, “is based on special reasons, reasons so peculiar that, if you decline, instead of selecting any of your comrades, I shall request my colleague at Saint-Lo to apply elsewhere. I see you are puzzled? The fact is that it is not so much as an advocate, but as an occultist, a spiritualist, that I am proposing you for the defence of this notary—a certain Gurlot who——”

“I don’t understand,” I said, blushing and bewildered.

"I suppose not. But to begin with, my information is correct, is it not? You go in for table-turning and spirit-rapping? You are a member of that select society of students who arranged last month for a visit from Madame X., the theosophist, who asserts that she has brought over from India the secret of the Fakirs?"

I admitted the fact, adding that a youthful and excusable curiosity had led me to investigate such subjects, which were attractive to the modern spirit of inquiry.

"Don't suppose I am blaming you. Go on by all means spending your evenings, in company with other intelligent youths, in the effort to discover the unknowable. I can assure you I am much better pleased than if I heard that you were wasting your time, like some of your colleagues, behind the scenes of the local music hall."

"I see, Chief," I replied, a little annoyed, "that you are well posted up."

"My dear fellow, you know how fond they are of gossip in a provincial town. And there is a special prejudice against those whose interests lie in an unusual direction. You are supposed to hold the most extraordinary opinions; you have acquired the reputation of a necromancer, a sorcerer."

"And you, Chief—do you listen to these stories?"

"Of course I do, I find them amusing; but I accept them *cum grano salis*. So I took the precaution of asking what foundation there was for these rumours at

to your tastes and habits. *Entre nous*, you do believe a little in the supernatural?"

"Certainly. I don't believe that all ends with death. I do believe that the spirit survives."

"I should prefer to say the soul," M. de Chamboucy replied. "Like you, I believe in the immortality of the soul; but I have no belief in the existence of ghosts or phantoms communicating with human beings."

"I affirm nothing, but I think it not impossible that—"

"Good! And so without any blind belief in these supernatural forces, you don't deny their possibility?"

"Certainly not."

"Well, that's what I wanted to know. Whether you like it or not, my dear Glatigny, you must defend this notary. The case moreover is rather out of the common. Just imagine that this scrivener, who had begun to write a will at the dictation of a sick man, asserts that he was able to finish it, after the testator's death, by means of an indication of his intentions supplied by his spirit."

"How extraordinary!"

"It will be a curious case. If I were your age, spiritualism or theosophy apart, I should like to make the acquaintance of this Gourlot and study his character. Knavery or hallucination, in either case it is interesting. What, you object to 'hallucination?' Why, you are already defending your client! Let us

call him a 'visionary,' if you prefer. You are not annoyed with me?"

"Oh, dear no. But, Chief, can't you supply me with some details of the case, and let me know the nature of the charge and the surrounding circumstances?"

"You ask more than I can answer. I can only read you the letter I received from my colleague at Saint-Lo. Here it is: 'He asserts that he really heard the spirit of the deceased dictate to him the few words which were necessary to complete the will. He has applied for a *pro deo* defence, having no means to instruct counsel. Gourlot, in fact, has been ruined by his suspension, which the authorities, who are often inclined to be down on notaries, have already decreed. We have four young advocates here, competent enough, but Gourlot will have nothing to say to them. Each time, after an interview, he complained that the advocate seemed to refuse to believe in his good faith. In the end, he asked me to make inquiries, either at Caen or at Paris, and try to find someone who did not regard the possibility of supernatural intervention as inadmissible. To tell the truth, I am rather sorry for this Gourlot; and as you at Caen, with your faculty of law, have an exceptionally large bar, I write, on the off chance, to inquire whether any of them possesses the qualification he seeks. If so, send him at once. The case comes on next week and is considered the most important in the calendar.'

“And that,” added M. de Chambouey, “is all I know. Well, you will take the brief and go to Saint-Lo? Good luck to you! Excuse me now, I have to go into Court. When you come back, you will tell me all about it.”

I went home in a state of emotion impossible to describe. My life so far had been uneventful enough; and now this extraordinary case—at five and twenty, one has no sense of proportion and I already regarded it as one of the great trials of the century—fell into it like a bolt from the blue, an aerolite plunging into some peaceful lake. What a responsibility it involved, but at the same time what a curious study in psychology!

I was however troubled by one scruple. Did I really believe in the spirit remaining in the vicinity of the body which had ceased to live? I felt a difficulty in answering this question. I must own that my opinions, even in the most essential matters, are apt to fluctuate. With me sentiments and emotions tend to evoke ideas, to fix opinions. Should an accidental cause make me earnestly desire that a thing should be, I easily believe that the thing is. While still in my teens, I had been assailed by doubts and had almost ceased to be a Christian; the loss, in rapid succession, of both my parents caused me such a shock that faith returned as if by enchantment; the certainty of never seeing them again would have broken my heart. As a matter of fact I suspect that most people, without

recognising it, to some extent share this weakness. As Pascal puts it, "the object of all our reasoning is to justify compliance with our inclinations."

As to communication with spirits, my opinions have varied more than once. I have told you that I was long a sufferer from somnambulism. In that state the patient does things for which the reason supplies no explanation. In my own case, for instance, in my waking hours I am a very poor draughtsman; but I used to draw wonderfully well when asleep. What is the source of these extraordinary powers? A Norwegian occultist asserts that the soul of the somnambulist is wont to give place, for the nonce, to that of someone who loved us and whose affectionate spirit cannot bear to leave us. He adds, in support of this theory of "insinuation," that the somnambulist, during his sleep, almost invariably acquires the gifts of some deceased friend. Now, as a matter of fact, it was only towards the end of 1868 that, during my attacks, I began to draw. At that time, I had lost a sister who loved me tenderly. She used to draw extremely well. Her favourite subjects were models borrowed from classical subjects. Well, I can show you the things I drew in my sleep; they were always subjects from the antique!

You will not be surprised to learn that, at that period, I was penetrated by the idea that we are constantly surrounded by the spirits of the dead. Often, when I went to bed, I used to speak to my sister who, I felt, was about to watch over my slumber.

Some time elapsed and, after a long holiday in Switzerland, my feelings changed. I gradually became more sceptical on the subject of occultism. I had observed that the spirit of my mother had never revealed itself to me. No one had loved me so deeply ; so I felt that, had her spirit been near me, it would have succeeded in making itself manifest, if only to comfort me when I was depressed by gloomy thoughts.

Later on, I took up the study of the leading works on the disturbances of the mind. There is a chapter in Ball—that on the simultaneous affections of twins—which influenced me profoundly. I see you don't follow me at all. Well, I can assure you, it is here no question of hypotheses, more or less conjectural, but simply scientific facts, observed and related by hospital doctors and professors of the faculty. Let me give you one or two instances.

Two twin sisters, up to the age of eighteen, enjoyed excellent health. They resembled one another closely, so that it was difficult not to mistake one for the other. Both had blue eyes, a fresh complexion, a lively disposition. They used to dress in the same style, think and act in the same way. One of them, Louise, got married and, after a while, her husband fell ill. One evening the doctor came. Louise seized a knife and stabbed the doctor, calling him a murderer. She had become suddenly insane and they had to shut her up. The same day, at the same hour, fifty miles away, the other sister, Georgette, went to the house of a doctor

whom she did not know and insisted on seeing him. As soon as she was introduced, she assaulted him, and exactly in the same way as her sister had done elsewhere. She also had to be sent to an asylum.

Two twin brothers, Francis and Martin, lived in Brittany, a few miles apart. One night, while Francis was asleep, a thief got into his room and robbed him. It was about four in the morning. At the same hour, Martin suddenly woke, got up, threw himself on his son, who was sleeping near him, and tried to choke him, exclaiming "You are robbing my brother." In his excitement he then ran away and threw himself into the river. They got him out and took him to the hospital. Meanwhile Francis, discovering he had been robbed, went into a fit of exasperation. Being unable to find the thief, he set out to tell Martin about it. On not finding him at home, he seemed extremely annoyed. As no one was watching him, he rushed off and drowned himself in the river at the very place, where, without his knowing it, his brother had tried to commit suicide.

In these and other cases there is no doubt about the facts. What is the explanation? Ball and the other authorities don't explain them, but content themselves with describing them as "extraordinary." I continued to study the subject and gradually arrived at the conviction that certain minds can communicate at a distance and even effect a substitution and take the place one of the other. You seem surprised? Still, you can't

think it an unreasonable supposition that there exist in nature numerous forces, scattered, hitherto unsuspected, some of the effects of which some accident, from time to time, reveals to us. In former times we had no suspicion of the existence of the electric current or the magnetic fluid. They existed all the same. What about hypnotism and the power possessed by some individuals, like Doctor Gibert, of Havre, who, from their chimney corner, can compel the subject of their influence, miles away, to speak and act? Is not that wonderful? Why is it more difficult to admit that spirits, after death, instead of flying away immediately into the clouds, remain in the vicinity of the living and possess some power, vague and intermittent, of communicating with them?

Was this long preface to my story of the will superfluous? I think not. You will now see me face to face with the prisoner, with the man who asserted that he had been in communication with a spirit. If I had not acquainted you with my point of view as to the supernatural, you would have failed to understand the motives which dictated my attitude.

Two days after the interview I have described, I went to St. Lo and first obtained a permit to visit my client at the gaol. On the way, I tried to imagine his appearance; young, I guessed, thin, gaunt and nervous, with a big white forehead, sunken eyes and cadaverous hands.

The gaoler took a bunch of keys and bade me follow

him. We traversed some long corridors, silent and cold, and at last entered the visitor's room, a depressing apartment where we waited some time. I was nervous and felt some anxiety about Gourlot's appearance, which I trusted would be prepossessing. It is such a help! In Court, before the jury, the first impression is often decisive, especially with a country jury. At the Circuit Court, at Caen, I had frequently noticed that first, swift glance, with which the jury scan the prisoner as soon as he appears in custody. Some experienced advocates go so far as to give their man a lesson in deportment, rehearse his gestures and explain how he ought to behave at this or that phase of the inquiry.

I heard the sound of approaching footsteps. A key was turned and the door opened. There advanced, with a clumsy, oscillating gait, an individual of uncertain age, corpulent, ugly, ill-dressed, with enormous feet, a coarse complexion, thick lips, a red nose and straggling hair. Gourlot, for it was Gourlot—unfortunately there was no doubt about his identity, the gaoler named him—struck me as simply grotesque.

He offered me his hand, with a friendly air; "Good morning, Maitre Glatigny; I hope you have had a pleasant journey." He accompanied the phrase with an awkward bow, more than once repeated.

I had to make the best of it. "Good morning; I have had a very pleasant journey. I have come to hear your story. Tell me all about your case."

He began with a reference to the question of fees, which he explained that he hoped to be able to pay in the event of an acquittal; otherwise it would be impossible. He had no family and, since his misfortune, no friends.

"M. Gourlot," I said, "I have purposely refrained from acquainting myself with the case for the prosecution, lest it might produce a bad impression. Every case has two aspects, according to the standpoint from which it is regarded. Tell me your story, just as you would like me to tell it when the time comes."

"So you know nothing about the case?"

"All I know is that you are accused of forgery, and that it is alleged that you completed a will which had been interrupted by the death of the testator."

Gourlot crossed his legs and began as follows:—

"You must know, to begin with, that for fifteen years I have been in practice at a small country town called Vatteville. The district is neither populous nor rich but some of the farmers have made a good deal of money out of breeding stock. Since I established myself there my practice has steadily improved and, though it was not a fat one, I was comfortable enough, especially as I had remained single. I believe I may add that I enjoyed a good reputation. Of course every one has his enemies, there is jealousy and envy everywhere, but at all events I was not conscious of any marked ill-feeling on the part of any of my neighbours.

"One evening, I was called to the house of a

wealthy farmer, Prosper Morin, who was on his death-bed. His only relation was a nephew, a rather shady character named Journiat, who had more than once tried to persuade his uncle to come and live with him. Morin was suspicious and had always refused. In fact, he told his neighbours freely that he didn't intend to leave much to Journiat, preferring to recompense some worthy people who had formerly been of service to him.

"When I got to the house, there were already in the room four persons whom the servant had fetched as witnesses. They were all respectable people—the blacksmith, a grocer, two other retail dealers. In the middle of the room there was a round table at which we took our seats. I was nearest to the bed. Morin was dying of an internal cancer. For two days he had been unable to take any nourishment and he spoke with difficulty. With an inclination of the head he thanked me for coming, and then said: 'Make haste.'

"I sat down and began as follows: 'Well, Master Prosper, you want to make a will?' 'Yes,' he replied. 'Good,' I said, 'I am at your orders, I am listening to what you say.' I then began by writing the formula; — *Before me the undersigned, Sylvain Gourelot, notary residing at Vatterville, in presence of the witnesses to the instrument, there appeared M. Prosper Morin, being of sound mind and understanding* — 'now, Master Prosper, speak:' 'I institute,' he said with an effort, 'as my general heirs, half to each, Ursule Chapeau, of Renaut

. . . and Valentin Beausejour, farmer at Cochevielle. . . . I bequeath to my servant Florentine an annuity of two hundred francs. . . .' At this period, I proceeded to read over the document and, turning to the sick man, who seemed to have become worse, I asked him whether he adhered to these dispositions. He replied, very feebly, 'Yes.' 'Can you sign?' 'No, I can't.' These last two answers, it seems, were not heard by the witnesses. I added to the document that the testator declared himself unable to sign, and then, turning to the witnesses, said, 'Now, gentlemen, will you sign? Move the table a little away so as not to disturb the patient.' The witnesses signed. It was a long business; for these country people an attestation is a solemn affair. When it was over, they rose and came to say goodnight to Morin. They then discovered, as did I, that he had ceased to breathe, perhaps a few minutes before."

"Come, come," I said, "you are going rather fast. At this point I should like a few details. How was Morin's death ascertained? Did any one hear a groan, a death rattle, or did he suddenly expire?"

"No, there was no noise. On touching him, we felt that the pulse had stopped and that he was almost cold. The witnesses knelt down and we murmured a prayer."

"So you don't deny that he was dead before the will was finished?"

"Certainly not. I can't deny it," was the answer.

"On thinking it over, I have come to the conclusion that he must have been dead for at least five minutes. But, at the time, how could you expect me to have noticed it, since his spirit had remained in close and intimate communication with myself?"

He said this quietly, with an air of conviction, like a man sure of himself. *He had heard the spirit.* Still I could not help feeling that he did not bear the slightest resemblance to any of the mediums I had ever known.

He seemed to guess my doubt, for he went on, in a different tone :

"My dear sir, you seem—how shall I put it?—stupefied! I thought it was understood that I was to have the assistance of an advocate who believed in the possibility of such communications."

"Well, I do believe in it, in principle. I freely admit that the soul does not always, immediately, depart from the body, but to infer from that that the spirit of a particular individual communicated with you, and that too just at the right moment to enable you to complete a useful notarial act—it is the fact, is it not, that the nephew was not a client of yours while the legatees were?"

"I can assure you, sir, that he did not cease to speak to me distinctly, so much so that I could not state positively at what moment his lips still gave utterance or at what moment it was only the spirit that——"

I scrutinised his features. He continued, with downcast eyes and an aggrieved air :

“ As to the judicial authorities, their training makes them suspicious ; and they are always apt to be severe on public officers, when they get them in their clutches. I can’t prevent such people from asserting that I stuck at nothing in order to keep in my office the administration of an estate which, in the event of an intestacy, would have gone elsewhere. But,” he proceeded, with a depressed manner, “ if they had had the slightest fairness, if their intelligence was not clogged with prejudice, ought not the State Attorney and the examining magistrate to have recognised that, even if I did not really hear Morin speak, I might have imagined that I had done so ? Now, the Code says expressly that fraud is not to be presumed. A man is not to be condemned for an hallucination. To convict me, they must prove that I acted with fraudulent intent. Is there any evidence of premeditation on my part, with the view of obtaining some illicit advantage through a forged will ? They have done me a grave wrong on mere presumptions. They have asked the Minister to cancel my appointment and, strange to say, they have got the order. And do you know on what grounds ? Simply because I admitted that Morin was dead before the will was finished. If I had denied that, they could not have deprived me of my licence to practise before the verdict. I have been punished for my candour. You see before you a victim of

persecution. Every one condemns me and yet, I swear to you, I am not guilty. I really heard Morin's voice up to the end. I implore you to believe me." And after an interval he added, raising his head and speaking, this time, almost in a voice of command—"in fact you *must* believe me."

"Excuse me, you must allow me to exercise my own judgment."

"You have no right to do so," he replied with energy. "As an advocate you are there to speak in my place, to express better and with more eloquence what I should put less effectively. You must adopt my line, whether good or bad, and make it convincing. Otherwise, of what use are you? Whether you believe that I am innocent or not, it is your business, at my instance, to make the jury believe it. If you don't, you betray my interests."

I protested vaguely. As a matter of fact, though such notions are at present rather out of fashion with our bar, I myself to some extent shared his views. I am of the opinion that advocates, though they are apt to adopt a much more independent attitude, are really nothing but the instrument, the "mouth-piece," of the client. They have no business to form an opinion about a case before pleading it. Good, bad or indifferent, every conflict requires two champions, who have to measure themselves each against the other. Each of them must play as well as he can the part of the person whom he represents. Oh! yes, my

friend, it must be so ; if not, what excuse should we have for fighting a bad case? Heaven knows there are plenty such! D'Alembert, as a youth, in the school of law, had dazzled the other students by his fluency and eloquence. He went to the Courts to study the procedure before being called, and took notes assiduously. Some of the old hands asked him about his impressions. "What strikes me," he replied, "is that many causes are objectionable *on both sides*. Sometimes, again, where the case seemed a fair one, I have seen counsel adopt methods which were very much the reverse. The inference was that, had he not done so, he would have lost the verdict. That seems to me very serious." The result was that, after full consideration, D'Alembert, whose eloquence in the schools had been so remarkable, never put in an appearance at the bar. My views on the subject being as I have described, you will not be surprised at my compliance with Gourlot's request.

"I will do all I can to persuade the jury, or force them to the conviction, that you acted in good faith."

"That I acted in good faith! No, that is not enough. I want more than that."

"More than that?"

"The jury must really believe that I did hear the voice, that such voices can be heard."

"What a task you are setting me!"

"Sir, I insist."

"Perhaps you are too rash. Think it over! Once you adopt this line, there will be no backing out."

"I insist. Oh! of course, I know perfectly well, we might plead that no one has been prejudiced and the nephew is comfortably in possession of the estate. One of my colleagues visited me the other day and advised me to take this line, which he felt certain would result in my getting off with a slight penalty. No, no, all or nothing; penal servitude or freedom!"

The earnest, glowing accents in which he spoke made a strong impression on me. When I left, I told him he could rely on me absolutely. On his asking whether he should see me again before the trial, I replied in the negative. It was a difficult case to handle and would require much reflection; I should prefer to be quite alone till I had to go into Court.

"Sir," said Gourlot, emphatically, "only make the jury believe that the spirits can speak, and I shall be acquitted."

"My friend, I hope they will believe it."

II

THE case for the prosecution was stated in terms comparatively brief. The falsification, it said, being substantially admitted, the only question was whether Gourlot could rely on his simplicity and the honesty of his intentions, or whether, on the contrary, he had not acted under the influence of vulgar cupidity and sordid greed. Now, Gourlot was a needy individual. His neighbours knew that he was in embarrassed circumstances; he had the reputation of an artful intriguer, always making plans for securing the handling of sales and inheritances. He even went so far as to enlist the services of brokers and paid agents to bring him business.

Prosper Morin, it continued, whose will he forged, was his best client; but there was nothing more to hope for from the connection, as he was on bad terms with the sole heir to the property. If he was to make anything out of the succession, Morin must leave his fortune to one of his own clients. If he left it to two of them, so much the better; in that case, the notary, besides his fees for the will and inventory, would get a percentage on the partition of the estate. Unfortunately

for Gourlot, Morin, notwithstanding the suggestions of his servant, a woman of indifferent reputation, did not seem at all disposed to disinherit his nephew. While things were in this position, the prisoner heard that Morin's illness had taken a fatal turn and that his hours were numbered. He immediately decided to take advantage of the absence of the nephew and try to persuade the dying man to make a will. Some witnesses were collected, Gourlot arrived, sat down close to the bed and pretended to hear something dictated. However, it proved impossible to finish this comedy. While Gourlot was still writing, Morin expired. If the witnesses, who were some distance off, did not notice this at once, the reason was that the recess, occupied by the bed, was dimly lighted; but Gourlot could have had no doubt. In any case, when one of the witnesses approached the bed to say good-bye to Morin and touched his hand, he found it was almost cold, proving that death had occurred at least some minutes before. The notary did not fail to impress on the witnesses the importance of holding their tongues about "this incident."

But his precautions were useless. Circumspect though the peasants are, the truth leaked out. The commissioner of police was informed, by an anonymous letter, of the irregularities which had occurred. On being questioned, Gourlot coolly replied:—"Yes, it may be that Morin died before my act was completed, but he did not cease to communicate with me." This

singular reply having been forwarded to the law department, the notary was arrested and taken to gaol. Immediately afterwards, his tools, the two so-called legatees, spontaneously renounced the benefits of the sham will and the servant abandoned her annuity. This renunciation is very significant. Gourlot, in short, must be regarded as a forger. He now wants it to be believed that he is a medium and communicates with spirits. So gross and impudent an imposture requires no further characterisation.

All this did not strike me as very formidable. "Must be regarded!" But insinuations are not proofs. Gourlot, it is true, was poor, but he lived in his little office. He was not in debt. Three inhabitants of Vatteville would come and swear that Morin detested his nephew, that he really intended to disinherit him, and that the notion of making a will was his own. Again, and this was a great point, there were four competent witnesses, who asserted that they had heard Morin distinctly pronounce the names of his legatees. The case against my client rested on a series of presumptions. Of this I hoped to make an effective demonstration, when I commenced my speech. But then began the difficult part of my task; to convert a jury—a country jury—into a belief in occultism!

I shut myself up in my room and did not leave it for three days. I have been told by advocates, who have grown old in harness, that if you, so to speak, live with a case, and mould it to your guise, it undergoes

a transformation. You see only the good points and, however little it may have to recommend it, in the end you persuade yourself that it is the best in the world. As a rule, to arrive at such a conclusion requires some effort of the will; but in my case no such effort was necessary to convince me of the sincerity of Gourlot.

But how was I to persuade a jury to share my opinion that those invisible forces, those impalpable beings, who float around us, can manifest themselves to certain privileged individuals whose senses are temporarily endowed with an exceptional receptivity? To work on the rustic imagination I should require some dramatic effects. During those three days I lived in a peculiar atmosphere. I recalled everything I had read about apparitions and ghosts and haunted houses. In the end, through steeping myself in this fantastic ambit, I began to feel such a sensation of oppression that I doubted my ability to dispel the visions I had so rashly evoked. When you once take to living among these ghostly visitants, you no longer know where realities end and dreams begin. . . .

The examination of the prisoner produced, on the whole, a favourable impression. Gourlot's replies were given with confidence and in a manner which was easy but unassuming. As they looked at this little scrivener, neatly dressed, respectful in his answers to the judge, the jury must have asked themselves whether there was not some mistake. They had seen in the dock on the

previous days a procession of gaol-birds, highway robbers and thieves, who had got off with moderate periods of imprisonment; and now there stood before them this respectable citizen, this notary with his white tie, whom they were asked to send to penal servitude.

There had been a number of witnesses and counsel for the prosecution had been prolix. It was not till the evening sitting that I rose to begin my speech for the defence. "How much time, Maitre Glatigny, are you likely to occupy?" inquired the presiding judge.

"At least three hours, my lord."

"Three hours! What? In such a simple case!"

"My lord," I interrupted in a dry tone—I was annoyed by the State Advocate's shrug of his shoulders—"I am of opinion that the defence requires certain developments. If I did not feel at liberty to dispose of all the time I consider necessary, I should prefer not to address the jury."

"Oh! Maitre Glatigny, of course the defence is perfectly free," the President replied, with a sneer. "Still you will admit that the consideration due to the jury made it advisable to warn them of what is in store for them. And now you can begin your address!" Whereupon, pleased with his little sally, the President reclined on his seat, his head in his hand, his eyes half shut, with the air of an indifferent spectator.

At first I spoke with a difficulty, attributable to the emotion which I felt; but I had such a thorough grip

of my subject that I soon surmounted this initial hesitation. I succeeded, as I fancied, in pulverising the case which the prosecution had built up. I then experienced a sort of exhilaration. The really interesting part of my speech was just going to begin.

I was in search of a transition in my argument, something which would to some extent prepare the jury to follow me in the journey which I was about to undertake into the land of the occult, when a strange thing happened. You know how rare are thunderstorms in winter. But just then a rolling sound was heard in the distance; then some flashes were seen. They became frequent, blinding, followed by alarming peals of thunder.

The storm was horrible—and splendid. Outside, the wind howled, whistling round the buildings; the rain beat on the windows. The audience, alarmed, silent and absorbed, seemed to hang on my words.

I went on and on, carried away despite myself. The surrounding objects seemed suddenly to disappear from my vision. A strange song filled my ears with its sonorous cadences. What was I saying? I knew not, or rather I did know, but without hearing the words I uttered. Presently, amid this chaos of confused sensations, I felt as if I had been transported, by some enchantment, into an immense tomb where dead men were gazing at me. The dead men were doubtless the jury, who sat, pallid and petrified, in their box.

I was afterwards told what I had said. They were

strange things, but expressed with such an inspired air that it seemed an echo of the world invisible.

“Yes, the dead can speak, and they do speak. To some men they appear. And why should they not, since the soul is immortal? In the Scripture, spirits appeared to Samuel, to Saul, to David. And so in history. On the eve of the battle of Philippi, an apparition presented itself to Brutus: ‘I am thy destiny, to-morrow thou shalt see me again.’ The next day Cæsar’s murderer beholds the same phantom, which announces his approaching death. How many others, like Jeanne d’Arc for instance, have heard the voices of invisible beings, or sighs floating in the air, borne as it were on the wings of the wind? Have we not sometimes a curious feeling that we have already been in certain places which we are visiting for the first time? Doubtless because we have seen these places with the eyes of another being, by whom, ever and anon, we have been penetrated or possessed. On every side we are surrounded by mysteries. It is mystery which is the mistress of the world!

“Who among you, on some night of pain, has not heard strange sounds, which made the walls seem to quiver? It appeared as if they were about to open, as if a voice were speaking to us from beyond the grave. The next day, in our eagerness to dispel a troublesome impression, we have attributed it to a nightmare. A nightmare! Why, when we heard the voices, our eyes were wide open!

"If it is proved to you by a cloud of witnesses that, even long after death, the spirits of the departed have communicated with the living, why, to-day, should you refuse to admit that the voice of Prosper Morin, this man dying in despair at his inability to complete, in human language, the expression of his last wishes to the friend called to his bedside—why should you deny that his voice did nevertheless make itself heard by him as he expired in his arms?"

"And this prejudiced prosecution, got up by shortsighted officials, ignorant of the developments of mental science, incapable even of suspecting the existence of these mysterious natural forces, these emanations of the astral ether, dares to demand from you the affirmation that the man before you heard nothing.—'Heard nothing!' What do they know about it? No, no, you will not condemn my unhappy client! You will say that it is impossible to prove that the dead never come back, that dead men never speak. The dead—do—come back, dead men—can—speak!"

These last words fell slowly from my lips, with a lugubrious, glacial sound, in the dreary stillness of the Court. For a moment the spectators remained in their places in a sort of stupor. Then a voice muttered something.¹ The jury noiselessly left the box, and retired to the consulting room. I can see them now, filing out, with downcast heads. It seemed as if they were afraid to look at me.

¹ In France there is no "summing up." The defence has the last word.

Weary, enervated and alone, I paced the dimly lighted corridor. I felt a barrier of silence between myself and all other men, which I should have liked to break, but among the few who were present at that late hour, in the precincts of the Court, there was no one that I knew. Fortunately for me, an elderly gentleman, who had been sitting near the Registrar throughout the trial, and whose fine, intelligent head I had noticed, came up and spoke to me. "Sir," said he, "excuse my addressing you. I am a philosopher, an admirer of the beautiful in art. You have just delivered a remarkable speech; accept my congratulations. I have heard the most eloquent speakers, but I really had no idea that at any of our bars there was a man of such peculiar gifts, one whose language was so loaded with thought, so capable of stirring the imagination. Just now we were all hanging on your lips, hypnotised by your eyes and the terrible rigidity of their expression! I have never experienced such emotion. You made me shiver. I felt as if I were no longer on earth, as if I had been consigned to some limbo, as if I should never again behold the daylight. It was really splendid! Your efforts, too, were helped by the storm, by the peals of thunder, which seemed to mark the cadences of your oratory."

"I am much obliged to you, sir. And so," I added feverishly, "in your opinion the jury, on whom I was certainly anxious to produce a strong impression, will acquit the prisoner?"

The old gentleman shook his head.

"Ah! that's another question. Your speech, from the artistic point of view, was marvellous; but I am afraid it was a very dangerous one for your client."

"What?" I exclaimed with an involuntary start.

"Why, didn't you look at the jury? Their hands were trembling, their teeth were chattering. They really *saw* the ghosts you were showing them. Perhaps you thought that, with such an audience, you had to force your effects. That was a mistake—a great mistake! The peasant has not the same kind of imagination that we have, but he is a big child, and the imagination of children is extravagant and enormous. The peasant at bottom is pusillanimous, superstitious, easy to impress. If he changes colour when the salt is upset, or the bread put on the table the wrong way, or an uneven number of candles lit, it is because he believes that there are hundreds of dangerous powers by which men are threatened. He is nearer than we are to the primitive man; and the primitive man lived in constant terror. All round him, in the obscurity of night, in the vast forests, the spectres used to dance, while the wild beasts, the were-wolves, the demons, prowled about seeking whom they might devour. Oh yes, our peasants are terribly superstitious. Remember our Breton militia, in 1870, after the first battles. On guard, in the dark nights, as they listened to the melancholy howling of the wind, all at once they thought they heard the spirits call—the spirits who, in their country, by the light of

some will-o'-the-wisp, roam about at night over the moors, among the great granite dolmens, or along the coast, amid the murmurs of the receding tide. And then these men who, in the day-time, had been the bravest of the brave, fled terrified and panic-struck. Well, now, on those twelve peasants whose pallid faces confronted you, while the threatening thunder rolled above their heads, you have inflicted a terrible ordeal. You have made them accompany you to the edge of a precipice. At the present moment they have escaped you; they are pulling themselves together. They have run away and stopped their ears, so as to hear your voice no more. 'No! no!' they are saying to themselves, 'it isn't true. Those whom we have injured will never come down the chimney at night and drag us out to the heath, to join their infernal dances. No! no! the dead can't speak!'"

"You make me very anxious."

"In any case, sir, your anxiety will be brief. I hear their bell. They are coming back."

"Just one word more," I added, nervously detaining him. "What line of defence, in your view, ought I to have taken?"

"Hum! I should scarcely like to say."

"Please tell me what you think."

"Well, since you insist, in your place I should have confined myself to the contention that the charge against Gourlot was a ridiculous one. Where was the prejudice? As the old saying goes, 'No

prejudice, no damages.' I think I should have ventured to add a humorous touch or two. I should have dropped a hint that this was one more instance of official spitefulness with regard to notaries. I should have tried to be jocular; *solvuntur tabulæ risu!*"

I felt an icy shiver, which reached my marrow, as we returned to the Court.

The jury were already seated. Their foreman rose and raised his hand: "On my honour and conscience, before God and men, the verdict of the jury is, Yes, the prisoner is guilty." A few minutes afterwards Gourolot had been sentenced to ten years' imprisonment.

The blow was too much for me. With a cry of despair I fell fainting to the ground. They carried me on a stretcher to the hotel, where high fever supervened, followed by delirium. I was saved, I understand, by applications of ice to the temples; but for several days I hovered between life and death.

When I arrived at the convalescent stage, the doctor, to whom I had told the story of my anxieties, entailed by the sentiment of responsibility, advised me never again to take up a case likely to excite my feelings. "You have certainly created a sensation. They still speak with admiration of your speech, but you put too much of your brain into it. You must not repeat the experiment. Another time the emotion of an unexpected failure might prove fatal. You are far too sensitive. You compose a speech as Musset

composed his poetry, with sobs and groans, and the very marrow of his being. The strain was too much for him. Be warned by his example."

"Unfortunately," I replied, "I feel that, however prosaic the affair—even if it were a mere matter of money—I am capable of 'suggestionising' myself to such an extent as might produce a recurrence of my sensations of the other day."

"Then, my dear sir, give up pleading altogether. Your case is a singular one; your feelings run away with you. Now this Gourlot of yours, if you will excuse my saying so, is, I feel sure, an impudent scoundrel."

"Doctor, you are most unjust. I feel sure of his innocence, sure, at all events, that he thought he heard the voice. However, I know that you said that simply to console me, and lighten the weight of my remorse."

"Not a bit of it. I said so because I think so. In his own district no one has a word to say for him."

"Because people are such cowards. When a man is down, everyone kicks him. But I shall stick to him, as I feel myself responsible for his condemnation. His disaster weighs on my conscience. Had I handled the case in a less tragic style, had I not frightened the jury, they would have acquitted my client. My advocacy has proved fatal to him. I have the evil eye."

"Ah!" replied the doctor, "you are a terrible casuist. All excesses should be avoided, even excess

in scruples. Take my advice, go away for a change, read no more occultism, avoid the 'unknowable,' live in the open air and develop your muscles. The nerve trouble will then disappear. Otherwise, I answer for nothing."

His advice was good. I left Caen, travelled in the South, and abandoned psychical research. Unfortunately, I had too much leisure. After a while my thoughts began to turn to my unfortunate client, my only client, my victim. What had become of him? I made inquiries and ascertained that he was at the central prison at Clermont.

I returned to Paris and went to the Ministry, where I saw the Director of Remissions, with whom I was strongly backed by one of my cousins, who was a Member of the Senate. The director was so agreeable that I did not shrink from confiding to him the pre-occupations by which I had been so long and cruelly harassed. The affair had really poisoned my whole existence.

"Well," said the official, "shall I give you a document certifying that the Minister will remit half the unexpired portion of the prisoner's sentence, on condition of his making a confession?"

"I should be infinitely grateful if you would."

"Very well, then. Go to Clermont. In two days you will find at the prison an official letter to that effect."

On arrival, the first question which I addressed to

the Superintendent was with regard to the prisoner's demeanour. Did he appear resigned?

"The man is an enigma. I fancy he has a cool contempt for humanity in general."

"It is very natural. If I told you his story——"

"Oh, but I know it. He has told me about it and I have read the documents. Still, I scarcely know what view to take. His innocence is scarcely credible; on the other hand, unless he is endowed with extraordinary pride and phenomenal assurance, his attitude, his bearing and behaviour, are not such as indicate guilt. However, you will judge for yourself. And yet scarcely so, for a confession will prove nothing! Guilty or no, he will doubtless make the admission which the Minister requires as a condition of the reduction of his sentence. I will send for him at once."

Gourlot's appearance had changed, but not to his disadvantage. He bore himself not without dignity in his prison attire. There was nothing in his features denoting that disillusion, that lassitude, which characterise men whose life is ruined. He recognised me at once and exclaimed, before I had opened my mouth:

"I was expecting you. I knew you would come this morning."

"You knew? Who told you?"

"Last night, Prosper Morin spoke to me. Since I have been here, his spirit has come to console me more than once. The last time it was to tell me that he was

about to see you, and would inspire you with the idea of exerting yourself on my behalf. Last night he informed me of what you had done."

"And so you know that I went to Paris?"

"Yes, and that you went to the Ministry of Justice. There you obtained a remission for me—on certain conditions."

"Quite correct. And the condition was——?"

"That I should confess."

"Well?"

"Well, I refuse. I am not an impostor. *I did hear the voice.*"

I was much affected. "And so, my poor fellow, you are resigned to passing another five years here?"

"No! Morin guarantees my discharge in any event in a month's time."

"Then you expect a free pardon? But who will apply for it? Who will have influence enough to obtain it?"

"You."

"I! How can you think of such a thing?"

"I know what I am saying."

And, without another word, he left me.

On the Superintendent inquiring as to the terms of his reply, I confined myself to stating that the prisoner emphatically refused to confess. Had I said anything about Gurlot's interviews with the spirit, the official view might have been expressed in sarcastic terms to which I was in no humour to listen.

The next day I returned to Paris, more anxious and nervous than ever. I had passed a frightful night. So this man, whose condemnation I had caused, was still in communication with the spirits! And this was the man whose innocence I had sometimes doubted!

I went to see my cousin, the Senator, who was horrified by my appearance.

I told him that, the more I thought of my position, the more miserable I became! I felt that my remorse would affect my reason, unless he succeeded in obtaining the unconditional release of the victim of my conduct.

"I can see that rascal will be the death of you," was the Senator's reply.

"For God's sake obtain his pardon."

"I will speak to the Minister this evening; but it will be entirely on your account; as to the fellow himself, he does not interest me in the least."

My interview with Gurlot took place on May 12. On the 12th of June he left Clermont, a free man—just a *month* afterwards.

Well, there is my story. You have listened attentively, you have formed an opinion. You have come to the conclusion, have you not, that this man was—genuine?

Why do you shake your head? Is it possible?—No, no, I can never admit it—Good God! have I ruined my life by allowing myself to become the dupe of a scoundrel?

No, I can't, I won't believe it! ¹

¹ It is rather a curious coincidence that, while this story appeared in the *Deux Mondes* of March 1, 1901, in the course of the same month a banker named Vogl was arrested at Vienna on a charge of obtaining by fraud the fortune of a Russian Jew named Taubin, alleged to have been verbally bequeathed to him. It appears that Vogl went to what was supposed to be Taubin's death-bed, accompanied by a lawyer and his clerk, who deposed that Taubin in their presence made a verbal bequest of all his property to Vogl. The latter was put in possession of the estate, but the charge was afterwards brought against him that, being a ventriloquist, he had himself spoken the words after the death of Taubin, whom he was also suspected of having poisoned. (See *Westminster Budget*, March 23, 1901.)

AN EVENING WITH DR. JOHNSON

AN EVENING WITH DOCTOR JOHNSON¹

"LECTURES," Doctor Johnson once remarked, in a conversation with that distinguished jurist, Sir William Scott, afterwards Lord Stowell, "were once useful; but now, when all can read, and books are so numerous, lectures are unnecessary." "I cannot see," he observed on another occasion, "that lectures can do so much good as reading the books from which the lectures are taken. I know nothing that can be best taught by lectures, except where experiments are to be shown. You may teach chymistry by lectures." Johnson was fond of chemical experiments; had he lived at the present day he might perhaps have made another exception in favour of lectures illustrated by photographs or lime-light views. Gibbon, of whom I shall have some occasion to speak to-night, perhaps had this assertion in view when in a passage of his "Memoirs," characteristic of his style, which in some respects resembled that of Johnson, he remarked that "it has indeed been observed, nor is the observation absurd, that, excepting

¹ An Address delivered at Kimberley to the Wesley Guild on July 14, 1903.

in experimental sciences which demand a costly apparatus and a dexterous hand, the many valuable treatises that have been published on every subject of learning may now supersede the ancient mode of oral instruction." Carlyle expressed the same thought in his *dictum* that "the Modern University is a University of books."

Now in face of these authorities—the authority of Johnson, of Gibbon and of Carlyle—the question suggests itself, Why are you and I here this evening? There are no experiments to be performed; no slides to be displayed; we are here to talk of men and letters. Perhaps we may find a plea for the proceeding in Johnson's own words. "Books," he says, "are so numerous." Elsewhere he speaks of "this superfoetation, this teeming of the press in modern times;" how much more numerous have they become since then and how small a proportion of them do the exigencies, real or imaginary, of life in the twentieth century—the obsession of what the Germans call *Brodwissenschaft*, the great stream of periodical literature, the pursuit of athletic sports, the conduct of motor-cars, and the tyranny of bridge—how small a proportion of the great feast of literature do these pursuits and amusements give us the leisure or leave us the inclination to enjoy! "Lectures," he added, "cannot do so much good as reading the books from which they are taken." They can however perhaps to some extent attract attention to the books and stimulate the taste for reading them;

and that I suppose is my best excuse for asking you to join me in spending an evening with Doctor Johnson.

Lectures, it has been observed, if they serve no other useful purpose, may often prove advantageous to the lecturer himself—especially if he selects a subject which he knows nothing about. It has been asserted of Sir Henry Maine that he first took up seriously the study of the civil law on his appointment as Regius Professor in that faculty at the University of Cambridge. Wesley, the bicentenary of whose birth occurred just four weeks ago, and of whom, in addressing the Wesley Guild, I shall have something more to say to-night, was nearly Johnson's contemporary at Oxford—for it was from Oxford that Wesley set forth to conquer Britain. Whitefield, by-the-bye, like the poet Shenstone, was a member of Johnson's own college, and they were both in residence shortly after he left. Wesley tells us that he always delivered six lectures a week when Greek lecturer and moderator at Lincoln College; "however," he says, "the students may have benefited by them, they were of singular use to the moderator." "I should have thought myself little better than a highwayman," he remarks in his "Journal," "if I had not lectured my pupils every day in the year"—all his pupils, he tells us, resided throughout the year—"except Sundays;" his ideas on the subject were evidently different from those of Gibbon's tutor at Magdalen, who is branded in a famous passage of his "Memoirs," describing the Oxford of his time, as

“one who well remembered he had a salary to receive and only forgot he had a duty to perform.” The duty, when undertaken, of delivering an address may at all events enable the lecturer to refresh his memory as to matters of which his knowledge is like the possession, according to Plato’s famous illustration, of birds in an aviary; and how much of our knowledge—especially perhaps in the case of the lawyer and the man of letters—is of that description! It is a good many years since I last read my Boswell, in the excellent edition of Mr. Napier. I know not how far I may succeed in interesting any of my audience in the subject; but I do know that it has been an immense interest to me, during the last few months, to read him again in the classical edition of Dr. Hill, whose loss all lovers of literature have lately had occasion to deplore. Both editions—and, so far as I am aware, everything else of real importance bearing on the subject—are to be found in our Public Library, and I shall feel amply repaid for the work of preparing this address if it leads to their being more frequently perused.

The thoughts which are suggested by the name of Samuel Johnson might well afford material for many a course of lectures; the task of selecting the most appropriate topics for a single *conférence* is one of almost overwhelming difficulty. I suppose I must say something about his life and writings; but for these matters you can go to the books—to Sir Leslie Stephen’s able appreciation—as to which, the more I

have studied the Johnson literature, the more I have been impressed with the skill and judgment with which he has selected and arranged his materials—in the series of English Men of Letters, or to the admirable article, written by Macaulay in his old age in the “*Encyclopædia Britannica*”—now being given away by *The Times* at an alarming sacrifice, with a prize competition thrown in! I shall proceed therefore, after indicating the main facts in the merest outline, to consider some of the traits of his character, some of his qualities as a man and to endeavour to give some description of the conversation in which he delighted and the company he kept.

Lord Beaconsfield once asserted, with characteristic inaccuracy, that he was born in a library. Johnson might have said so with a stricter adherence to fact; for his father was a bookseller at Lichfield and his childhood was spent in an atmosphere of books. He was nurtured among the prejudices—High Church, Tory and Jacobite—of the clergy of a small cathedral city two centuries ago. *Quo semel est imbuta recens*—and the influence of the Lichfield and the Oxford of the earlier half of the eighteenth century no doubt largely contributed to the views on government and politics which he maintained in maturer years. Sir Leslie Stephen makes a slight mistake, in the opening lines of his book, in describing Johnson's father as having in the year of his birth—in 1709, just a century before that *annus mirabilis* which saw the birth of Gladstone

and Tennyson, of Darwin and of Lincoln—held the office of “sheriff of the county.” That would mean Sheriff of Staffordshire, a post tenable only by a gentleman of landed estate. The fact is that the city of Lichfield was for certain purposes what is called an administrative county, of which Michael Johnson, who had with reluctance taken the oath, on his appointment as a Magistrate, of fidelity to the Hanoverian dynasty, held the shrievalty during that year. The bookseller was a man of some energy; he used to open a stall on market-days at Birmingham, which had then no bookshop of its own, and at Uttoxeter, where his son once refused to attend him. “Pride,” he explained to a young clergyman in the last year of his life, “was the source of that refusal, and the remembrance of it was painful. A few years ago, I desired to atone for this fault; I went to Uttoxeter in very bad weather, and stood for a considerable time bareheaded in the rain, on the spot where my father’s stall used to stand. In contrition I stood, and I hope the penance was expiatory.” It was the only instance of such disobedience that he could recall; and in general, in his behaviour in family and domestic life—in his filial piety, his devotion to his aged mother—it was to pay her debts and funeral expenses that he wrote “*Rasselas*” in the evenings of a single week—his affection for his elderly wife, his kindness and consideration in later years to what he called his “seraglio,” which consisted of certain aged and helpless dependents on his bounty—he showed an admirable

example. His father however fell into business difficulties; it was only through the assistance of friends that he was enabled to matriculate at Oxford; and he had to leave, owing to want of means, without taking a degree. He afterwards set up a school in the country, near Lichfield, which was not a success, but where he had the honour of having Garrick for a pupil. Garrick accompanied him to town, where he may be said to have lived in Grub Street—though the actual Grub Street it afterwards appeared he had never seen. He learnt how to dine on eightpence a day; he was once arrested on a debt of £5 18s., and only released through the kindness of Richardson; and at night he sometimes knew not where to lay his head. At one time he seems to have aspired to another country schoolmastership, for which however a University degree was necessary; and Pope, who never met him, but who admired his "London," made an indirect attempt to get him a degree from Dublin. An effort was made to enlist the sympathy of Swift. He afterwards received, *honoris causa*, in recognition of his distinction as a writer, the Master's degree of Oxford, as well as that of Doctor from Dublin. He does not seem however to have habitually assumed the latter title or to have used it at all till after it had been conferred on him, some years subsequently, by his own *alma mater*. One cannot help regretting that this distinction appears to have been bestowed, on the suggestion of Lord North, as a complimentary recognition of his pamphlet on the

American controversy—"Taxation no Tyranny"—which, like his pamphlet on the Middlesex election, "The False Alarm," shows his notions of arbitrary power and contempt of public opinion in the most unpleasing light. It redounds to the honour of Boswell that he never hesitated to condemn these contributions to the controversies of the day, though the work of his own hero and on the side to which his sympathies mostly inclined. One regrets, on the other hand, to learn that Johnson's views on the American question were shared by Wesley. The principal excuse pleaded for Johnson's vehemence on the subject is that he hated the Americans as slave-owners and distrusted the "cant" of constitutional liberty when it came from the drivers of negroes. He had a great sympathy with subject races, "rightly struggling to be free;" he once wrote that "I do not much wish well to discoveries, for I am always afraid they will end in conquest and robbery." "I love," he said, "the University of Salamanca; for when the Spaniards were in doubt as to the lawfulness of their conquering America, the University of Salamanca gave it as their opinion that it was not lawful." What, I wonder, would he have thought of the modern scramble for Africa? He might not have been much impressed by the blessings of civilisation—or, as he preferred to say, "civility"—as illustrated by what Lord Cranborne calls the "highly developed" administration of the Congo "Free" State; he might even have felt some lurking sympathy for the Mad Mullah; and I fear he

would hardly have escaped denunciation as a "Little Englander" in the ubiquitous organs of the yellow press.

When Johnson came to town, he formed a connection with Cave, the proprietor of the *Gentleman's Magazine*, who employed him to edit the Parliamentary debates under the title of "The Senate of Lilliput." The speeches were mainly compiled, from very scanty materials, by Johnson himself, and, while he tried to indicate the drift of the arguments used on both sides, he took care, as he explained, "that the Whig dogs should not have the best of it." By his imitations of Juvenal—"London" and the "Vanity of Human Wishes"—he acquired considerable reputation but little cash—ten guineas for the former and fifteen for the latter—and the only thing which at this period brought him any worldly wealth was perhaps the worst of his productions, the tragedy of "Irene," produced by Garrick, then Manager of Drury Lane. I suppose, of all his writings, it is the most unreadable; Johnson himself in later years thought ill of it. Garrick however contrived a sufficient "run" to make the performance fairly profitable to the author—he received in all nearly £300 for the copy and his share of the profits of representation—and on the whole his reputation was increased by his appearance as a dramatist. As an essayist he became widely known by the *Rambler* and the *Idler* and his contributions to the *Adventurer*. While the *Tatler* and the *Spectator* are still to some

extent perused, and Sir Roger de Coverley is something more than a mere name, Johnson did not possess, in the same degree as Addison, "the antiseptic of style." Stephen considers that "the *Rambler* marks the culminating period of Johnson's worst qualities as a writer." When it appeared however it enjoyed a fair measure of popularity and, what was more important, brought in for its writer two guineas a number or four guineas a week. It was translated into Italian as *il genio errante* or *il vagabondo*, of which titles the translation of Mr. Kipling's "absent-minded beggar" as *Il mendicco errante* reads like a combination. Johnson, in his old age, was highly elated at a report that the Empress Catherine—the patron of Diderot and Voltaire—had ordered the production of a translation in the Russian language. He himself admitted that his style was open to criticism; he had been in the habit of using too many words and too big ones. Darkness for instance he defined as "inspissated gloom;" while the "Beggars' Opera" involved such a "*labefactation* of all principles as might be injurious to morality." He admitted that he "borrowed Gargantua's mouth;" "something," however, he claimed in the concluding number of the *Rambler*, speaking of what he had done for our language, "something perhaps I have added to the elegance of its construction and something to the harmony of its cadence."

To the English language however he was at this time engaged in rendering a much greater service.

Three years after the *Rambler* expired, the "Dictionary" appeared. It had been the labour of some seven years, carried on with scanty assistance, and for payments from the booksellers, which had been overdrawn before it was completed. When he sent the last sheet to the publisher, Johnson asked the messenger what he said. "Sir," said the messenger, "he said, 'Thank God I have done with him!'" "I am glad," replied Johnson, "that he thanks God for anything." The "Dictionary" has of course in the process of time been superseded; it was in many respects unsatisfactory, partly through want of careful revision, partly through Johnson's ignorance of etymology, which had then been little studied, and as to which he afterwards adopted some of the corrections of Horne Tooke. "Ignorance, madam, pure ignorance" was the cause to which, on being asked by a lady for an explanation, he ascribed one mistaken definition; many of the definitions were obscure, and some sarcastic or intentionally perverse. But after all, Johnson's dictionary is the foundation of modern English lexicography, and the *catena* of "harmless drudges" begins with the name of Johnson which ends with the name of Murray. It gave him his undoubted position as the "Great Cham" of literature. The epithet was due to Smollett, whose epitaph it afterwards fell to Johnson during his tour in Scotland to revise. It first occurs in a letter written by Smollett to Wilkes on behalf of a *protégé* of Johnson's and was misapprehended by Boswell, who thought Smollett had

written "Great Chum." In his first edition he inadvertently on his ignorance; in a later edition, having been corrected by Lord Palmerston, he apologised to his remains. Johnson was described not only as the Great Cham, but as *Ursa Major*, or the Great Bear. He was so dubbed by Boswell's father, after his visit to Auchinlech; but it seems that in his epithet Lord Auchinlech had been anticipated by the poet Gray. There was no love lost between the poet and the critic; though Johnson admitted that one or two stanzas in the "Elegy" were not devoid of merit.

I have sometimes wondered whether it may not have been to some extent in connection with his work on the "Dictionary" that Johnson acquired his remarkable store of practical knowledge. He was once described by a manufacturer as "the only person who on a first view understood both the principle and powers of his most complicated pieces of machinery." It is perhaps not surprising that he had made himself acquainted with all the details of the bookseller's business, as shown by his letter on the management of the Clarendon Press; or with that of the brewer, owing to his intimacy with the Thrales. Mr. Thrale indeed had so much confidence in his judgment that he made him one of his executors, in which capacity he explained that what he had to sell was "not a parcel of boilers and vats, but the potentiality of wealth beyond the dreams of avarice." The brewery was in fact sold to Barclay and Perkins for £135,000; and

the capital of their company is now reckoned in millions. But while, when Johnson, at Dunvegan Castle, explained all the operations of brewing, they thought he must have been bred to the trade, when, on the same day, he explained all the operation of coining, his hearers thought he had been bred in the Mint. On another occasion, "he gave an account of the whole process of tanning;" he knew all about threshing and thatching and the way to bargain with agricultural labourers; though, after explaining to the officers at Fort George the whole art of making gunpowder, he admitted that he had "talked ostentatiously." On one occasion, when the work attributed to Mrs. Glasse was being discussed, he asserted that he could write a better book of cookery than had ever been written; it was to be "a book upon philosophical principles." He was dining at the time with Dilly, the publisher, and proposed to agree with him for the copyright.

It was the more curious that he knew so much of such things, and showed such powers of observation, because he could see so little. He seemed generally, as he rolled about, to be abstracted and lost in thought; and, though he was a keen critic of a lady's attire, he never in his life really saw either a picture or a play. He loved Garrick, though he sometimes flouted him; for Reynolds he had a deep affection; but his visual range was too imperfect for him to be able justly to appreciate either the art of the actor or the genius of the artist. In other respects, he laboured under many

disabilities and defects. His face was disfigured from his infancy by that "evil" which, in his case, the hand of Queen Anne had failed to cure; his massive frame was indeed a *corpus incultum*; his gestures were uncouth. Dr. Hill has I think satisfactorily demonstrated that it was not Johnson whom Chesterfield described as a "respectable Hottentot." But his habits at table were disagreeable; his toilette was often neglected, and for clean linen he once mentioned that, like "poor Kit Smart," he had no passion. He was however a man of great physical strength and dauntless courage. As a youth he was a strong swimmer and a bold rider; he enjoyed roughing it in the Hebrides, and braved with equanimity those dark and stormy waters in small and ill-found boats; although perhaps he was then confirmed in his opinion that no sensible man would go to sea, who had "sufficient contrivance" to get into a jail. "A ship," he explained, "is a prison, with a chance of being drowned." He thought nothing of separating two fierce dogs who were fighting. He once knocked down a bookseller with a Greek Bible—in folio; he knocked down Lord Chesterfield with a letter; and he bought a stout cudgel with which to repel the threatened attack of McPherson and chastise, if need be, the insolence of Foote. In the sequel, the author of "Ossian" abstained from paying his promised visit, and Foote abandoned the idea of mimicking him on the stage.

By the publication of the "Dictionary" Johnson's

reputation was firmly established; his position as a literary dictator, a sort of lively oracle on all such matters, was now secure; but the years of toil which had produced the "Dictionary" put no money in his purse. For another seven years he lived from hand to mouth, until he accepted, after some hesitation, a modest pension from the Ministry of Lord Bute. The pension was given in recognition of his literary eminence and involved no pledge of political subservience. Johnson, however, in his "Dictionary" had defined a pension as "an allowance made to anyone without an equivalent. In England it is generally understood to mean pay given to a state hireling for treason to his country." In view of this gibe, Johnson felt embarrassed, and did not accept the offer until he had consulted Reynolds, who assured him that he need feel no scruple and that the definition in the "Dictionary" could never be applied to its author. It is interesting to notice, however, that the definition still remained in the fourth edition which appeared, with the author's corrections, ten years afterwards. In later days, his scorn was diverted from pensioners to those who called themselves patriots. The word "patriot," he had explained in the "Dictionary," is "sometimes used for a factious disturber of the Government." "Patriotism," he once declared to the Club, "is the last refuge of a scoundrel." Of the word scoundrel, it may be observed, his usage was very elastic. It implied various degrees and kinds of opprobrium. A sick man was apt to be a

scoundrel; anyone who went to bed before twelve o'clock was a scoundrel; a Whig was *ex vi termini* a scoundrel; when talking about the Nabobs—whom it was then the fashion to denounce in terms applied in the present day to mining magnates and other capitalists—carrying elections by their wealth, he opined that “there is generally a scoundrelism about a low man.”

Johnson, as a pensioner, emerged from Grub Street and lived at his ease. His natural indolence, largely the result of ill-health—he rarely knew the luxury of a good night's rest—was no longer goaded into writing by the necessity of earning his daily bread; and although he planned a good deal, the outcome was desultory and intermittent. The long-promised edition of “Shakespeare” at length came out, after he had been stung by the taunt that he had taken the cash of the subscribers—as the pensioner in the “Dictionary” took that of the State—“without an equivalent.” The edition contained much sound sense and judicious criticism; the editor did not attempt to explain what he himself failed to understand, and may be said to have paved the way for the work of Malone and other subsequent commentators. A more congenial production was the “Lives of the Poets,” which occupied the closing years of his life, and which showed much of the same skill—the same just conception of what a biography should be—as the “Life” of his friend Savage, published in his youth. In biographical detail and personal characteristics, Johnson was always much more keenly interested

than in the dry facts of general history. "Sooner than hear of the Punic War," says Murphy, "he would be rude to the person who introduced the subject." "He never," he once explained to Mrs. Thrale, "desired to hear of the Punic War while he lived." He was obviously one of those persons who would have been capable on occasion of speaking disrespectfully of the Equator. He thought that allusions to the ancient Romans were overdone, and that their commonwealth was one "which grew great only by the misery of the rest of mankind." What an interesting topic the proposition would have furnished for a talk at the Club with Gibbon; unfortunately Gibbon at the Club, as in the House of Commons, usually preferred the *role* of a silent member. "We are told," Johnson once observed at the Club, pursuing a train of thought of his own, "that the black bear is innocent; but I should not like to trust myself with him." Thus *Ursa Major*; whereon, we read, "Mr. Gibbon muttered, in a low tone of voice, 'I should not like to trust myself with you.'" "This," adds Boswell, who disliked Gibbon, "piece of sarcastic pleasantry was a prudent resolution, if applied to a competition of abilities."

Of Johnson as a critic I have scarcely time to say a word. He was a man of extraordinary width of reading, both in classical and modern writers, on almost every subject. He kept up his scholarship to the end of life and in the sleepless hours of his last illness occupied his mind by translating Greek epigrams into Latin verse.

Indiscriminate reading, regardless of quality, is perhaps rather debilitating, and prejudicial to intellectual vigour, than otherwise, unless corroborated by an exceptional memory; and Johnson's memory was as tenacious as that of Macaulay himself. In addition to the vast stores of knowledge thus accumulated, he had a remarkable power of swift apprehension and a gift of penetration rarely equalled and never excelled. He read rapidly and roughly and seemed to tear the heart out of a book. He was no enemy of skipping. Speaking of a recent work of travels, he praised its contents. "It is true," he added, "that I have not cut it; but I have no reason to suppose that what is on the uncut pages is worse than what I have read." He was a man of robust judgment and many prejudices, and the latter often coloured and sometimes distorted the former. Many of his critical observations seem strangely capricious. We must remember, however, that they were often thrown out in the course of casual conversation and not pronounced as definite verdicts. There is a well-known passage in which he praises a certain description in Congreve's "Mourning Bride" as superior to anything of the kind in Shakespeare. He failed to appreciate the charm of "Lycidas," though of Milton, notwithstanding his republicanism, his judgment on the whole was not ungenerous. He referred to him as "that poet whose works may possibly be read when every other monument of British greatness shall be obliterated." He did not think much of Swift and

doubted his authorship of the "Tale of a Tub." Of Pope he always spoke with much respect. As to Sterne, he asserted that "Tristram Shandy" did not last; and, though he had to admit that he had read his "Sermons," explained that it was only when he was shut up in a coach. "I should not," he added, "have even deigned to look at them had I been at large." But when Goldsmith described Sterne as "a very dull fellow," "Why, no, Sir," was Johnson's concise rejoinder. It is regrettable, however, that he himself described Gray as "a dull fellow" and Fielding as "a barren rascal." He thought the work of his friend Richardson far truer to nature. There are many to whom Fielding now seems mechanical, his personages for the most part puppets, and—with perhaps an exception in favour of the character of Partridge—the introductory chapters in each book on the whole the best portions of "Tom Jones." Hannah More—the friend in the eighteenth century of Johnson, in the nineteenth of Macaulay and of Gladstone—says that the only time Johnson was really angry with her was once when she alluded to "Tom Jones," which he spoke of as "a vicious book. I scarcely know a more corrupt work!" Johnson declared that he had never read "Joseph Andrews;" but elsewhere we learn that he "read 'Amelia' through without stopping;" and on her Mr. Smith in "Evelina" he complimented Miss Burney by saying that "Harry Fielding never drew so good a character." Perhaps, so far as Fielding's merits are concerned, the truth lies about

halfway between Johnson's disparagement and the eulogy of Gibbon. Gibbon, alluding to the fact that the Denbigh family, to which Fielding belonged, was connected with the House of Hapsburg, asserted that "the romance of 'Tom Jones,' that exquisite picture of human manners, will outlive the palace of the Escorial and the imperial eagle of the House of Austria." The authors to whom Johnson paid his highest compliment were Cervantes, Bunyan, and Defoe. "Was there ever yet," he asked, "anything written by mere man that was wished longer by its readers, excepting 'Don Quixote,' 'Robinson Crusoe,' and 'The Pilgrim's Progress?'"

Johnson's own writing during his later years, as I have said, was desultory; it was also curiously heterogeneous in its scope and subjects. He often assisted his friends and acquaintances by writing prefaces or dedications for their books; a dedication, he held, should not be mendacious, but was not expected to be impartial; the difference, as he put it, between a dedication and a history was like that between a lawyer's pleading a case and reporting it. He was great at epitaphs; "a man," he said, "is not on his oath in a lapidary inscription." Such inscriptions, he held, like "everything intended to be universal and permanent," should always be in Latin. After he had composed the celebrated epitaph for Goldsmith's monument in Westminster Abbey, it was agreed, at a dinner at Reynolds's, to draw up a "round robin," as

being the most deferential form of address, respectfully suggesting some alterations in detail and "that the memory of so eminent an English writer ought to be perpetuated in the language to which his works are likely to be so lasting an ornament." The document was drafted by Burke, and among the signatures were those of Reynolds and Gibbon. Reynolds undertook its presentation; Johnson "received it with much good humour, and desired Sir Joshua to tell the gentlemen that he would alter the epitaph in any manner they pleased, as to the sense of it; but he would never consent to disgrace the walls of Westminster Abbey with an English inscription."

Besides prefaces and dedications and lapidary inscriptions, Johnson wrote a good many sermons, chiefly for his old college friend Dr. Taylor. Among the many services he rendered to the unfortunate Dr. Dodd was the composition of the address which the latter delivered, after his condemnation, as a dying man to dying men, to his fellow-prisoners in the old Newgate gaol. He also kept up his *belles lettres*, gave Goldsmith some assistance in the composition of the "Traveller" and the "Deserted Village"—when Goldsmith was asked to explain the meaning of an adjective in the former, Johnson found it necessary to set him right—and, among other Prologues, wrote that to his "Good-natured Man." As a characteristic specimen of his style in that *genre*, I may quote another Prologue, which he composed for a play of Kelly's, "A Word to

the Wise," which, damned on its first appearance, partly owing to political feeling, was afterwards represented, for one night only, for the benefit of his widow and children :—

This night presents a play, which publick rage,
Or right or wrong, once hooted from the stage :
From zeal or malice, now no more we dread.
For English vengeance *wars not with the dead.*
A generous foe regards with pitying eye
The man whom Fate has laid where all must lie.
To wit, reviving from its authour's dust,
Be kind, ye judges, or at least be just :
Let no renewed hostilities invade
Th' oblivious grave's inviolable shade.
Let one great payment every claim appease,
And him who cannot hurt, allow to please ;
To please by scenes, unconscious of offence,
By harmless merriment, or useful sense.
Where aught of bright or fair the piece displays,
Approve it only ;—'tis too late to praise.
If want of skill or want of care appear,
Forbear to hiss ;—the poet cannot hear.
By all, like him, must praise and blame be found,
At last, a fleeting gleam, or empty sound ;
Yet then shall calm reflection bless the night,
When liberal pity dignified delight ;
When pleasure fir'd her torch at virtue's flame,
And mirth was bounty with an humbler name.

From the church and the stage Johnson would sometimes turn to the law, to which profession he often regretted that he had not been bred. He had a more than ordinary acquaintance with the principles

of the law of England, and was wont to quote such phrases as "The King can do no wrong," *iniuria non fit volenti*, "a man is not allowed to stultify himself," with an appropriateness which showed that he had thoroughly grasped their gist. What was more daring was his plunge, on Boswell's behalf, into the intricacies of the law of Scotland. At his request, he prepared papers on such complicated subjects as the doctrine of "vicious intromission" and the principle of entails, on the question of whether a negro slave in Scotland was entitled to his *habeas corpus*, on such topics as what constituted undue correction by a schoolmaster, or corruption in a municipality, or defamation by a minister from his pulpit or by a University in the description of a doctor of medicine in his diploma. These notes were prepared for Boswell's use as an advocate and elicited the admiration of members of the Court of Session. "He does his work in a workmanlike manner," was the comment of Burke when one of the papers was shown to him. When the Edinburgh attorneys sued a publisher for injury to their reputation, Johnson would have dismissed the complaint with the maxim, *de minimis non curat lex*; but the Court of Session, after long debate, awarded them five pounds and costs.

Johnson once had a personal experience of the courts of law. His friend Baretta had stabbed a bully, one of a gang who assaulted him in the street, and had to stand his trial for murder at the Old Bailey.

Johnson had a great esteem for Baretti as a man and a writer. "He has not indeed," he observed, "many hooks; but with what hooks he has he grapples very forcibly." The hooks, at his trial, proved to be hooks of steel. Johnson was one of a distinguished company who were called to give evidence, principally as to character, for the defence. The affair had happened on a Club night of the Royal Academy, of which Reynolds was the President and Johnson Professor of Ancient Literature. Goldsmith was Professor of Ancient History, an office in which he was succeeded by Gibbon, and which is now held by Mr. Morley. Baretti was the Secretary for foreign correspondence—a post in which he was succeeded by Boswell—and had been expected at the meeting. Sir Joshua as well as Johnson spoke to his long acquaintance with him and his amiable disposition. Among other witnesses were Beauclerk and Garrick, Goldsmith and Burke. It is not surprising to learn that, after such impressive testimony, the Court stopped the case.

During his latter days, for a period of some fifteen years, the happiness and comfort of Johnson's life were much augmented by his association, which soon ripened into an intimate friendship, with Mr. Thrale, the wealthy brewer and member for Southwark, and his vivacious and accomplished wife. He had a room in their house in the Borough and at their pleasant villa at what was then rural Streatham, afterwards occupied by Shelburne when Prime Minister. Shortly before his death, Mr.

Thrale moved to Grosvenor Square ; there also Johnson was his guest and was with him when he died. The last year of his own life was embittered by the widow's marriage with Piozzi, a respectable and cultivated Italian, against whom Johnson was unfairly prejudiced, partly because he was a foreigner, partly because he thought Mrs. Thrale's behaviour to himself had been inconsiderate and wanting in respect. The marriage however proved a happy one ; it seems an interesting link with the past that I remember being told by my grandfather that he recollected as a young man going to a concert at their house.

During this period Johnson travelled a good deal. It is a mistake to suppose, as Macaulay asserts, that he knew nothing of rural England, and that, while thoroughly conversant with every phase of London life, "his philosophy stopped at the first turnpike." He was fond of travelling and bore its discomforts, which in those days were considerable, with the composure of a philosopher. There was scarcely a cathedral in England which at one time or another he had not seen. He shared Gibbon's delight in the rapid motion of a post-chaise ; he often stayed with his friend Dr. Taylor in Derbyshire, and once, when going in his chaise to visit Keddlestone, the seat of the family of the present Viceroy of India—and the house on the model of which it is said, curiously enough, that Government House at Calcutta was planned—he observed to Boswell that "if I had no duties, and no

reference to futurity, I would spend my life in driving briskly in a post-chaise with a pretty woman ; but," he added, "she should be one who could understand me, and would add something to the conversation." He was frequently at Oxford and once enjoyed a week end at Cambridge. He used to visit his friends and relatives at Birmingham and Lichfield, and his dear friend Langton in Lincolnshire. He once had an agreeable tour with Reynolds in the West of England, where they were received with great distinction. He stayed with the Thrales at Brighton and at Bath, then in the height of its glory as the resort of the world of fashion ; he accompanied them on a tour in Wales, visiting Burke at Gregories, near Beaconsfield, on his return ; *non equidem invideo, miror magis*, was his comment on Burke's charming retreat, which caused him so much embarrassment, and which, in the after years, inspired Disraeli in his selection of a title. He spent some weeks with them at Paris and was much disappointed when a family bereavement caused the abandonment of a projected tour in Italy, to which he had looked forward with anticipation of great delight. He went about a good deal with Boswell, whom he described as "the best travelling companion in the world." Soon after making his acquaintance, he paid him the compliment of accompanying him to Harwich, on his way to Holland ; and their journeys culminated in the tour to the Highlands and the Hebrides, which Boswell has immortalised in his "Journal" kept at the time,

most of which was perused, with increasing admiration for the author, by Johnson himself. Even then—he was nearly seventy—his zest for travel was not satiated and he more than once suggested to Boswell a voyage to the Baltic. Boswell, less ambitious, proposed Wales or Ireland. But Wales Johnson had already seen; as for Ireland, he opined that the Giant's Causeway was "worth seeing but not worth going to see." For natural scenery indeed he shared the indifference which was common to his age; what he mostly cared for was the study of men and manners, the observation of industries and arts. When Boswell in Scotland called his attention to "an immense mountain," Johnson dismissed it as merely a "considerable protuberance." It may indeed be doubted whether he did not share the view of his typical Scotchman that the "noblest prospect" in Scotland was the road to London. "The full tide of human existence," in his judgment, could best be felt at Charing Cross.

It was, in fact, "within the radius" that Johnson had most opportunities for that in which he took most delight—good talk. He went a good deal into society and was courted by both men and women of rank and fashion. On one evening for instance at Mrs. Vesey's, Mr. Langton describes the company, which was most distinguished, and included the Duchesses of Beaufort and Portland, as "collecting round him, till they became four or five deep, those behind standing and listening over the heads of those that were sitting near him."

The Duchess of Argyll was as friendly to Johnson as she was rude to Boswell, her demeanour to both being described with impartial minuteness by the latter. "I have seen," says Wraxall, "the Duchess of Devonshire, then in the first bloom of youth, hanging on the sentences that fell from Johnson's lips, and contending for the nearest place to his chair." Mrs. Vesey, whom I have mentioned, was, like Mrs. Montagu, a leader of what then were known as the "blue-stockings," a nickname of which Boswell explains the origin. With Mrs. Montagu, whom Wraxall describes as the English *Mme. du Deffand*, Johnson did not always hit it off; but at her hospitable mansion in Portman Square he often enjoyed "good talk." I have already spoken of his friendship with Hannah More; and among the many ladies with whom his name is associated—of whom you will find a lively account in Mr. Craig's little book on "Doctor Johnson and the Fair Sex"—it is impossible to avoid a word about Fanny Burney, the author of "Evelina," "Cecilia," and other stories, which evoked the enthusiasm of Johnson and Burke and which Macaulay nearly knew by heart. Her father, Dr. Burney, was an old friend of Johnson, and he first met the daughter—"little Burney," as he always called her—at the Thrales'. Once when she was having tea with Johnson in Bolt Court, Boswell, who was present, mentioned "Cecilia." "Sir," Johnson exclaimed, "with an air of animated satisfaction," "if you talk of 'Cecilia,' talk on." It was of "Cecilia" on its first appearance

that Gibbon declared that he read the whole five volumes in a day ; Burke said it was impossible, as he had taken three days, during which he did nothing else. Besides enjoying the society of ladies of fashion, and those distinguished for their literature and learning, Johnson also had a liking for those of the stage. He was acquainted with the leading actresses of the day. At Mrs. Abington's urgent request he attended her benefit, though he could neither hear nor see ; he was visited by Mrs. Siddons and was fond of a chat with Kitty Clive in the green room of Drury Lane.

But, while he mixed freely in society of many kinds, his full powers and the characteristic qualities of his talk were best exhibited among his more intimate friends, at a dinner for instance with Reynolds, or Boswell, or General Oglethorpe, or with Dilly the publisher in the Poultry, where, through Boswell's superb diplomacy, he first foregathered with Wilkes. The episode is too well known for description here, but I may mention that they met again, years afterwards, at the same hospitable board. No diplomacy was then required ; they found common ground in chaffing Boswell about Scotland and Scotchmen ; the author of "The False Alarm" indulged in a sly allusion to the Middlesex election and, on a hint from Wilkes, as a poor patriot who could not afford to buy such things, presented him with a copy of the "Lives of the Poets." Perhaps Johnson was seen at his best at the meetings of the famous Club, which he and Reynolds founded, and admission

to which is still regarded as a high distinction. There were originally only nine members, and in Johnson's time the number never exceeded thirty; the Club was always very exclusive, and Lord Chancellor Camden, of whom Goldsmith once complained—and was supported by Johnson in his complaint—that “he took no more notice of me than if I had been an ordinary man,” and Bishop Porteus, of Chester, were rejected at the ballot on the same day. Johnson's influence secured the admission of Boswell; Garrick, after some demur, was admitted with his support; and it was there that Johnson used to meet statesmen like Burke and Fox, men of wit and fashion like Beauclerk—I wish I had time to speak of his early and intimate friends, Beauclerk and Langton, of both of whom you will find interesting accounts in a volume of “Essays” published by Dr. Hill—Reynolds among the artists, Gibbon among the historians, men of letters like Goldsmith and Sheridan, eminent divines such as Bishop Percy and Bishop Douglas, eminent lawyers like Dunning and Chambers, Sir William Scott and Sir William Jones.

In the days of Johnson the republic of literature had become a monarchy. All sorts and conditions of men resorted to his morning *levée*, and he became the autocrat of the dinner-table. He was described by one of his friends as “a tremendous companion.” Sometimes, as when he explained the process of making gunpowder to the officers at Fort George, he admitted that he “talked ostentatiously.” He habitually “talked

for victory," and knew no scruples in his method of attack. He once described the advice which he quoted as given to Diomed by his father

αἶν ἀριστεύειν καὶ ὑπείροχον ἔμμεναι ἄλλων

"to be ever the bravest and best, all others to outstrip"

as "the noblest exhortation that could be instanced in any heathen writer and compressed in a single line."

As a matter of fact, either Johnson or Maxwell, who noted the saying, made a slip. The advice was attributed to his sire not by Diomed but by Glaucus, who cites it in a dialogue with Diomed; but, to whom-ever ascribed, Johnson evidently adopted it as his own maxim. On most topics he did not care much which side he took; he was often deliberately paradoxical; but he always fought to win. The talk once turned on play. "Why, Sir," he said, "as to the good or evil of card-playing——" There was a pause. "Now," said Garrick, "he is thinking which side he shall take."

In Scotland he had a dispute with Lord Monboddo about the respective merits of barbarism and civilization. "Monboddo," he wrote to Mrs. Thrale, "declared boldly for the savage and I, *perhaps for that reason*, sided with the citizen." His methods of controversy were disconcerting. As Boswell observed to Reynolds, "He has no formal preparation, no flourishing with his sword; he is through your body in an instant." "There is no arguing with Johnson," said Goldsmith, applying to him a phrase in one of the comedies of

Cibber, "for if his pistol misses fire he knocks you down with the butt end of it." He once said that when in his talk he lost a trick, he was apt to throw up the game. "You are much more inclined," said Boswell, *sotto voce*, "to beat other people's cards out of their hands." When some one insisted, contrary to his opinion, on the virtue of the medicated baths of an Italian quack named Dominicetti, "Well, Sir," he retorted, "go to Dominicetti and get thyself fumigated; but be sure that the stream is directed to thy *head*, for *that* is the *peccant* part." On one occasion, after a supper-party in the Strand, when he began by crushing Dr. Percy and afterwards, to show his impartiality, extinguished Tom Davies, he observed to Boswell, "Well, we had good talk." "Yes, Sir," was the reply, "you tossed and gored several persons." As I believe happens sometimes on the Stock Exchange, the bear for the nonce had become a bull. Boswell himself was often a victim of the process. "Sir," said Johnson, when Boswell was talking about him in his presence, "you have but two subjects, yourself and myself. I am sick of both." When Boswell mentioned the "Dunciad," Johnson said, "It was worth while being a dunce then. Ah! Sir, hadst *thou* lived in those days!" Johnson during most of his life was a teetotaller, and intemperate only in his use of tea. Boswell alleged that "drinking drives away care, and makes us forget whatever is disagreeable. Would not you allow a man to drink for that reason?" Johnson: "Yes, Sir, if he

sat next *you*." Boswell as a rule accepted his snubs with imperturbable good humour and chronicled them with scrupulous fidelity, usually substituting however for his own name, when he had been roughly handled, that of "a gentleman present" or "a member of the company."

Boswell, from the first day he met Johnson, in Tom Davies's back-parlour at Covent Garden, had to put up with a good many sarcasms on the subject of his nationality. Johnson shared the current prejudice of his time against the Scotch, which was largely attributable to the feeling that, under the Ministry of Lord Bute, they had enjoyed an undue share of public patronage and that their elannishness gave them an unfair advantage in the battle of life. "You know," he once wrote to Boswell, "the disposition of your countrymen to tell lies in favour of each other." He was shocked by a Scotchman who wanted him to recommend, for the mastership of an English school, a friend of whom he confessed that he knew no more than that he was a fellow-countryman. He wrote of the Scotch that their "mediocrity of knowledge, countenanced in general by a national combination so invidious that their friends cannot defend it, and actuated in particulars by a spirit of enterprise so vigorous that their enemies are constrained to praise it, enables them to make their way to employment, riches and distinction." In this respect the Irish shone by comparison. "The Irish," he said, "are not in a conspiracy to cheat

the world by false representations of the merits of their countrymen. No, Sir; the Irish are a *fair people*—they never speak well of one another.” When the Irish Dr. Campbell observed that the first professors at Oxford were Irish, “Sir,” he replied, “I believe there is something in what you say, and I am content with it, since they are not Scotch.” When some one expressed surprise that the Scotch had selected for occupation a barren district in America, “Why, Sir,” said Johnson, “all barrenness is comparative. The Scotch would not know it to be barren.” “Much,” he admitted, however, speaking of Lord Mansfield, “may be made of a Scotchman, if he be caught young.” In point of fact, he had a high appreciation of Scotch hospitality and Scotch politeness and many of his best friends spoke the accent of the north. When Boswell asked, soon after making his acquaintance, if he would meet him at dinner at the Mitre, though he was expecting a friend from Scotland, “Mr. Johnson,” was the reply, “does not see why Mr. Boswell should suppose a Scotchman less acceptable than any other man. He will be at the Mitre.”

Johnson often said that he did not care for “book talk,” or people who talked from books, as he thought was too often the case, without any originality of thinking. At the present day, he would have complained that they mostly talked from newspapers. “You and I, Sir,” he once said to Boswell, “do not talk from books.” Johnson once mentioned that when

in Wales "Mrs. Thrale's mother said of me what flattered me much. A clergyman was complaining of want of society in the country where he lived, and said, 'They talk of *runts*'—that is, young cows. 'Sir,' said Mrs. Salusbury, 'Mr. Johnson would learn to talk of *runts*.'" As a matter of fact, however, when he stayed with his friend Dr. Taylor, the talk used to turn largely on big bulls and he found it monotonous. The great merit of Johnson's conversation was that, whatever the topic, it seemed always to be enriched with thought. It was remarked that ideas, long revolved in his great mind, acquired a polish like pebbles washed by the ocean. "This man," said a doctor whom he met in the Hebrides, "is just a *hogshcad* of sense." The next day he was described by a lady as a "dungeon of wit." Reynolds was impressed by his power of discrimination; he said of his own "Discourses," "Whatever merit they have must be imputed, in a great measure, to the education which I may be said to have had under Dr. Johnson . . . he qualified my mind to think justly."

"I think myself," Johnson once declared, "a very polite man." When Lord Chesterfield's Letters were being discussed he declared that "every man of any education would rather be called a rascal than accused of deficiency in the graces." Gibbon, who was present, "in his quaint manner, tapping his snuff-box," said to a lady, who knew Johnson well, "Don't you think, Madam (looking towards Johnson), that, among *all* your acquaintance, you could find *one* exception?"

"I look upon myself," he said complacently to Boswell, "as a good-humoured fellow"—which Boswell good-humouredly denied. Gracefulness, politeness and good-humour were qualities which—whatever his own opinion—could be predicated of Johnson by an impartial observer only very much *sub modo*. In point of fact, he was frequently rough and rude, overbearing and tyrannical. He quarrelled, and made it up again, with most of his companions; even such long-suffering friends as Langton and Boswell himself were at times estranged. Men of eminence, like Fox and Gibbon, were chary of speech in his company—at all events when Boswell, with his note-book, hovered in the background; and Burke himself, who could hold his own in any company, was content, in suggesting topics, to "ring the bell for him." But he was wholly devoid of rancour; he seldom wounded intentionally unless he thought himself offended; when he had given pain he was ever anxious, as Reynolds observed, to make amends. If he was not always either good-humoured or urbane, he was, to adapt one of his own sayings, "at bottom" good-natured; he may be said to have been "fundamentally" polite.

For our knowledge of his private life and table talk we are of course in the main indebted to Boswell's recording pen. Boswell, it must however be remembered, knew Johnson only during the last twenty years of his life and was in his company, or his neighbourhood, only from time to time and for an aggregate

period of little more than two years. Sometimes too he was slack in keeping up his notes; his convivial habits made him too frequently oblivious of the feast of reason and the flow of soul; but on the whole he was diligent in the discharge of his self-appointed task, and he spared no pains in acquiring and carefully verifying information supplied by others and in gleaning particulars of his earlier life from Johnson himself. Johnson helped him a great deal, put his correspondence at his disposal, and fully authorised the contemplated biography. There is little need at this time of day to defend Boswell from Macaulay's sneers. Macaulay himself admitted that, as a boy of fourteen, he was proud of his grip of Boswell's book. Boswell of course was a man whom his contemporaries—such men, for instance, as Horace Walpole—and those who came afterwards found no difficulty in deriding. He lent himself to ridicule and was always a sort of social butt. His vanity and conceit were phenomenal; his impudence was what the French call *impayable*; he often gave way to habits of low dissipation; and intemperance was his bane and hastened his end. But he was a man of genuine, though erratic, ability; his reading, though desultory, was wide; his curiosity was insatiable, his literary skill remarkable and his zeal exemplary. Like Pepys, he had no reticence; he was not ashamed to reveal his own indiscretions or to tell a story to his own discredit—especially when it served as a foil to Johnson's forbearance and good nature. Perhaps his

principal characteristic was his *naïveté*; and, from the time of Herodotus downwards, the combination, in a skilful writer, of *naïveté* with shrewdness has ever enhanced the charm and contributed to the permanence of his work. Boswell loved Johnson, and might have said, as Ben Jonson said of Shakespeare, "I loved the man and do honour his memory, on this side idolatry, as much as any." That Johnson, who hated a fool, loved Boswell—"I hold you," he once wrote, as Hamlet has it, "in my heart of hearts;"—"I count your kindness," he says elsewhere, "as one of the chief felicities of my life . . . my regard for you is greater almost than I have words to express"—that he delighted in his company, and practically appointed him his biographer, would be a sufficient testimonial to his real merit, were any needed beyond the *monumentum aere perennius* which he himself built up.

In the useful and elaborate chart of the contemporaries of Johnson, which is inserted in Dr. Hill's edition, there is one singular omission which, in an address prepared at the request of the Wesley Guild, I think, before concluding, I should endeavour to supply. No mention is made of the name of Wesley, who, born six years before Johnson, survived him for a similar period. It was just after Johnson had matriculated at Pembroke that the Wesleys began to hold their devotional meetings at Oxford and religion revived under the guise of Methodism. Of Methodism

at Oxford Johnson's opinion was on the whole unfavourable ; but in later years he knew and esteemed Wesley. They did not agree on the subject of tea-drinking, which Wesley discouraged as a dissipation and extravagance ; but on other topics they found common ground. They both exerted themselves to improve the condition and diminish the sufferings of the French prisoners in England ; and they both went wrong on the question of the American War, as to which Johnson wrote to Wesley, on learning that he approved of his pamphlet, "to have gained such a mind as yours may justly confirm me in my own opinion." Of his own fellow-collegian, Whitefield, Johnson said that "he believed he sincerely meant well, but had a mixture of politics and ostentation, whereas Wesley thought of religion only." It is an interesting circumstance that Johnson introduced Boswell to Wesley, and the occasion may seem more interesting still. Both Johnson and Wesley were inclined to be credulous on such subjects as ghosts and witchcraft, and Boswell, with whom it was a favourite topic, was probably the most superstitious of the three. As to evil spirits, Johnson said "You have not only the general report and belief, but you have many voluntary and solemn confessions." "I cannot," wrote Wesley in his "Journal," "give up to all the deists in Great Britain the existence of witchcraft, till I give up the credit of all history, sacred and profane. And at the present time, I have not only as strong but stronger proofs of this from eye and ear witnesses than

I have of murder; so that I cannot rationally doubt of one any more than the other." Johnson in introducing Boswell, wrote that "I think it very much to be wished that worthy and religious men should be acquainted with each other." The fact was that Boswell wanted to investigate the story of a ghost in which Wesley believed, and which was said to have appeared, not, as Boswell states, at Newcastle but to a servant girl at Sunderland. You will find the narrative in Wesley's "Journal." Wesley, whose omnivorous reading on his journeys had included Boswell's "Corsica," received him very politely, but Boswell tells us that "his state of the evidence as to the ghost did not satisfy me." In this view Johnson concurred. A certain piece of exclusive information, attributed by Wesley to the ghost, could, he thought, have been conjectured by anyone with a knowledge of the procrastinating habits of attorneys at law. Johnson would not accept the Sunderland ghost and, so far from believing in, as alleged by Macaulay, he really helped to expose the celebrated Cock Lane ghost. He went into the matter personally and wrote an account of the imposture in the *Gentleman's Magazine*. Each case, he thought, depended on its own evidence. He was rather inclined to believe in the "shadowy being," which was supposed to have appeared to his friend Cave, the publisher; and he thought there might be something in the story, investigated by his own wife, of the ghost of the visitor which had alarmed the waiter in the cellar of the

Hummums. Of Wesley Johnson said "He can talk well on any subject, but he is never at leisure. He is always obliged to go at a certain hour. This is very disagreeable to a man who loves to fold his legs and have out his talk, as I do." Wesley mentions in his "Journal" having read Johnson's own account of his tour through Scotland. He observes that "many of the reflections are extremely judicious; some of them very affecting." One of his last entries relates that "I spent two hours with that great man, Dr. Johnson, who is sinking into the grave by a gentle decay." They were both great men; and among the leaders of thought in the eighteenth century, among those who influenced their contemporaries for good, and whose names posterity will not willingly let die, the names, in their several spheres, of John Wesley and of Samuel Johnson will assuredly retain a deserved pre-eminence.

And what shall I more say? For the time would fail me to tell, as I had hoped to tell, of the communing of Johnson with some of his greatest friends, in that illustrious company of which he was the chief, the company which included Garriek and Goldsmith and Reynolds—to whose brush we owe our knowledge of the master's countenance and to whom Boswell dedicated his book—and, last but not least, the great name of Burke. On this branch of my subject, I had accumulated many notes. But I fear I have already unduly strained your patience and perhaps I have said enough to induce you to pursue the topic for yourselves. I

will conclude, with your permission, by attempting, in a few brief sentences, to indicate how well it is worth your pursuit.

Of Garrick—who always retained in his intercourse with Johnson something of the attitude of an old pupil to his old master—it was remarked, both by Boswell and by Reynolds, that Johnson would allow no one to attack him except himself; he always defended him when attacked by others and his defence was warmer than his attack. Reynolds composed two imaginary dialogues in one of which Johnson was represented as attacking Garrick in answer to Reynolds himself and in the other as defending him in answer to Gibbon. Johnson maintained that, while Garrick was apt to be parsimonious in small matters, he was really a man of most generous disposition and behaviour. He admired his versatility and maintained that he had advanced the dignity of his profession. At his funeral in the Abbey, says Cumberland, “I saw old Samuel Johnson standing beside his grave, at the foot of Shakespeare’s Monument, and bathed in tears.” Of Garrick Johnson wrote that he had “gladdened life,” and that his death had “eclipsed the gaiety of nations and impoverished the public stock of harmless pleasure.” Boswell criticised the phrase. “Why nations? Did his gaiety extend further than his own nation?” “Why, Sir,” was the reply, “some exaggeration must be allowed. Besides, nations may be said, if we allow the Scotch to be a nation, and to have gaiety—which

they have not." Boswell, he added, was the exception that proved the rule.

As to Johnson's relations with Goldsmith, I cannot do better than refer you to the skilful picture which has been drawn by Sir Leslie Stephen. One of Goldsmith's many foibles was that, though he had little conversational power, his vanity constantly prompted him to talk at random and endeavour to attract attention. Horace Walpole called him "an inspired idiot;" Garrick described him as one

For shortness called Noll,
Who wrote like an angel and talked like poor Poll.

Goldsmith might have said, as Addison said of himself, that, though he had only ninepence in his pocket, he could draw for a thousand pounds; unfortunately, unlike Addison, he was always jingling the ninepence. Johnson, though he sometimes "tossed and gored" him, was very fond of "Goldy" and did him many a service. He pronounced his "Traveller" the finest poem that had appeared since the time of Pope. Goldsmith said of Johnson, "to be sure, he has a roughness in his manner; but no man alive has a more tender heart. He has nothing of the bear but his skin." Johnson, after his death, when some of the company, at a dinner at Reynolds's, were speaking of him in disparaging terms, growled out that "if nobody was suffered to abuse poor Goldy but those who could write as well, he would have very few censors." There must indeed

have been something winning in the nature of the man whose death, we read, "made Reynolds lay aside his brush and Burke seek relief in tears." Perhaps, after all, his best epitaph is not the "lapidary inscription" in the Abbey but the simple phrase which occurs in a letter from Johnson to Boswell: "Let not his frailties be remembered; he was a very great man."

Of Johnson's dear friend Reynolds, it might almost be said that, if Johnson taught Reynolds how to think, Reynolds showed Johnson how to live. "Sir Joshua," he declared, "is the same all the year round." He described him as "the most invulnerable man he knew, a man whom, if he should quarrel with him, he should find the most difficulty how to abuse." There is no record of any quarrel; but the one occasion on which Johnson was seen to blush was when he had made a rude remark at Reynolds's table and accepted his quiet but just rebuke. "We are now old acquaintances," Johnson wrote to him, shortly before his own death, "and perhaps few people have lived so much and so long together, with less cause of complaint on either side. The retrospection of this is very pleasant, and I hope we shall never think on each other with less kindness." Reynolds was one of his executors; his last request to him was to read his Bible and never to paint on Sundays.

For Edmund Burke, Johnson, while detesting his politics, had a deep affection and a profound respect.

He said he did not grudge Burke being the first man in the House of Commons, for he would be the first man anywhere. One of the best accounts given by Boswell of Johnson's table talk is an unusually full report of a dinner at the Club, when he was in a very genial mood, and Reynolds and Burke joined in the discussion of many topics, both grave and gay. "I love," Johnson said of Burke, "his knowledge, his genius, his diffusion and affluence of conversation." "Burke's talk," he observed, "is the ebullition of his mind; he does not talk from a desire of distinction, but because his mind is full." Johnson once declared that Thurlow was the only man in England whom in conversation he regarded as a formidable antagonist; but on another occasion, when he was ill, and Burke's name was mentioned, "That fellow," he said, "calls forth all my powers. Were I to see Burke now, it would kill me." But when he was dying, and Burke had expressed a fear that he was being fatigued by the company, "No, Sir," said Johnson, "it is not so; and I must be in a wretched state, indeed, when your company would not be a delight to me." "My dear Sir," Burke replied, with much emotion, "you have always been too good to me." "Immediately afterwards," we read, "he went away. This was the last circumstance in the acquaintance of these two eminent men." Long afterwards Burke declared in the House of Commons that "he valued Dr. Johnson's friendship as the greatest consolation and happiness of his life."

We have come to the closing scene. Worn out with sickness and suffering—"my diseases," he wrote to Hamilton, "are asthma and dropsy and, what is less curable, seventy-five"—the old man fought hard for his life. He was a man of fervent piety, but through fear of death, as he never hesitated to admit, he had all his lifetime been subject to bondage. His sentiments on the subject are perhaps best expressed in a short discourse, delivered on a certain Sunday morning when sailing in the Hebrides, which is too solemn for quotation here. Few men had led a more blameless life; but the day of his departure was to him indeed a *dies irae*, mainly because, like the great apostle, he regarded himself as the chief of sinners. Well, indeed, might he have exclaimed—as who may not?—in the words of that impressive hymn

Qui latronem exaudisti,
Et Mariam absolvisti,
Mihi quoque spem dedisti.

His monument was the first to be erected, not far from the spot where he lived and died, in St. Paul's Cathedral. The inscription was composed by Dr. Parr. On the scroll in his hand is engraved the Greek line with which the *Rambler* concludes, slightly modified to meet the susceptibilities of the Dean and Chapter. His dust is mingled with other venerable dust in the Poet's Corner of the Abbey. So long as the English

tongue is spoken, so long as English literature is loved, wherever men and women pursue the proper study of mankind, his memory will be cherished as an imperishable possession.

THE END

COLLECTANEA

ESSAYS, ADDRESSES AND REVIEWS

By PERCEVAL M. LAURENCE, LL.D.

*Judge President of the High Court of Griqualand ; formerly
Fellow of Corpus Christi College, Cambridge*

LONDON: MACMILLAN AND CO., LIMITED

CAPE TOWN: J. C. JUTA AND CO.

TABLE OF CONTENTS

ESSAYS AND REVIEWS

PEASANT LIFE IN FRANCE AND RUSSIA	
ARYAN SOCIETY	
JUDGES AND LITIGANTS	
A NOTE ON AGNATIC GUARDIANSHIP	
A NEW WORK ON INTERNATIONAL LAW	
EARLY LAW AND CUSTOM	
MODERN INTERNATIONAL LAW	
A HANDBOOK OF INTERNATIONAL LAW	
TWO EMINENT LAWYERS	
POPULAR GOVERNMENT	
ELEMENTARY POLITICS	
THE LAW OF THE CONSTITUTION	
SIR HENRY MAINE	
MR. GLADSTONE AT CAMBRIDGE	
NOVELISTS' LAW	
ROBERT LOUIS STEVENSON	
THE JUDICIAL SYSTEMS OF ENGLAND AND FRANCE	
INTERNATIONAL LAW AND SOUTH AFRICAN AFFAIRS	
PUBLIC LIBRARIES IN SOUTH AFRICA	
TWO DISTINGUISHED JUDGES	
ON CIRCUIT AT THE CAPE	

TABLE OF CONTENTS—*continued*

ADDRESSES

DIAMONDS AND THE DIAMOND FIELDS OF SOUTH AFRICA (Port Elizabeth, 1885)

THE KIMBERLEY LIBRARY: OPENING ADDRESS (Kimberley, 1887)

ADDRESS TO THE KIMBERLEY LITERARY ASSOCIATION (Kimberley, 1895)

MR. GLADSTONE (Kimberley, 1898)

EDUCATION AT THE CAPE (Cape Town, 1898)

EXTRACTS FROM REVIEWS

SOUTH AFRICAN NEWS (leading article).—"The Judge President has produced a book which should have a place on the book-shelves of every South African who thinks. Law, in the shape of reviews and essays, which cannot fail to be of assistance to 'stuffs' and 'silks' alike; Politics, in the high sense, as apart from party controversy, and consisting of the reflections of a man singularly fair to the European races in South Africa, their good qualities, their defects and their needs; Anecdote, stories grave and gay, of some of the most notable men of the time, several of them the author's friends and contemporaries—all these good things, and many others, are contained in this useful and interesting book. . . . The reader's only adverse criticism of the book, especially the papers that deal with Cape life and society with such a happy and sympathetic touch, will be that there is not enough of it. . . . There is a sketch of the life of Mr. Gladstone which is packed with good things and is, we venture to think, the best that has yet appeared. . . . We can only conclude by advising the reader to study the Judge's pages for himself. They are worth reading and reading again."

EAST LONDON DISPATCH.—"It is perhaps enough to say concerning the address on Gladstone that the author's work is worthy of his theme. It is difficult for the reader to express a nobler praise. . . . When he is really touched as in the address on Gladstone, he is touched to fine issues, and noble passages of musical prose are the result. . . . It only remains to say that the book bears an additional charm to that of style, in the author's personal reminiscences of great men and events. It is well bound and printed; herein the publisher has done the author excellent service."

PALL MALL GAZETTE.—"These papers deal generally with legal, social, and biographical matters—for example, 'Mr. Gladstone at Cambridge' is an excellent specimen—and are all eminently readable, the work of a clever, learned, genial, chatty Cambridge don who knows how to write good English pleasantly, and many a good story is told in these pages. . . . They include a group of South African essays in which the author's special knowledge and experience and trained power of observation give him a great 'pull.'"

DAILY CHRONICLE.—"Here is a book to remind us of the high culture which has so often distinguished our judicial Bench. . . . The traditions which moulded the characters of Lord Bowen and Lord Coleridge have set their impress on the author of this book. Literary gifts of no contemptible order are his, and a style marked by the love of classical culture, by wit, urbanity, and ease. . . . One chooses for detailed notice Dr. Laurence's appreciation of Mr. Gladstone—an appreciation of which no

one can question the good taste, deep feeling, and genuine art. . . . It is hard to refrain from quoting the eloquent words which Dr. Laurence, in an address delivered at Kimberley, consecrated to the memory of Mr. Gladstone."

QUEENSTOWN FREE PRESS.—"In the book before us there are clear indications of at least four distinct persons—the scholar, the jurist, the scientist, and the man. . . . Altogether the book is a remarkable one. . . . It is certainly a work which the earnest student can ill-afford to be without."

STANDARD.—"We have said enough to show that, legal mysteries apart, there is a pleasant literary flavour in these essays, and, perhaps, it is only necessary to add that they are invariably written with well-bred ease, and, now and then, with agreeable humour."

CAPE LAW JOURNAL.—"We most strongly commend this very pleasing volume to the public. . . . The re-publication as now presented is a valuable contribution to literature."

LAW TIMES.—"Essays, addresses, and reviews written and given from time to time by the author, make up an exceedingly interesting volume. . . . Several of the contributions will prove of current interest, as they deal with matters in South Africa. Two we have found of exceptional interest, namely, 'International Law and South African Affairs,' and 'The Judicial Systems of England and France,' while 'On Circuit at the Cape' is full of amusing anecdote."

CAPE ARGUS.—"We welcome this book as a very worthy contribution to South African literature. . . . The addresses are all admirable in style and substance alike. They reveal a cultured mind, a facile pen, and a vein of original and matured thought. 'Diamonds and Diamond Fields of South Africa' is at once a philosophical, historical, and practical disquisition on the theme. In the address to the Kimberley Literary Association, Mr. Laurence discourses charmingly on literature, theological criticism, and other aspects of modern thought and culture. . . . A more thoughtful and informing work has not appeared for many a long day."

MANCHESTER GUARDIAN.—"These 'modest collectanea of a colonial pen' are the utterances of an accomplished scholar and lawyer, and written in an extremely pleasant style. Mr. Laurence is Judge President of the High Court of Griqualand, and one could wish there were more colonial judges of like calibre and attainments. On South African affairs he speaks with the authority of experience—an experience which has induced a not unfavourable opinion of the Boers. . . . The volume contains appreciations of several eminent men which have the advantage of being written from personal knowledge of the subjects. . . . Mr. Laurence has done well to rescue his contributions from what to most of us is the obscurity of *The Cape Law Journal*, and the book will be found profitable and suggestive both to the lawyer and politician."

SPEAKER.—"Under the not very Ciceronian title of *Collectanea* the Judge President of the High Court of Griqualand publishes a number of his reviews and essays. Some of these—for instance, two most interesting on Mr. Gladstone—do not deal with African questions, but at this time the book is chiefly interesting because it contains the observations of a lawyer on the suzerainty question in the form of two reviews of Dr. Lawrence's works on international law. . . . The reader will find many suggestive remarks of more than technical interest on the much-disputed subject of the Conventions."

ONS LAND.—"Rechter Laurence is algemeen bekend als een van de grootste meesters der Engelsche taal in Zuid Afrika, en daarbij is hij een

man met veel denkkraft en uitstekende universiteits opleiding. Wij behoeven het dus niet to zeggen dat zijne 'essays, reviews en addresses,' leerzame zoowel als aangename leesstof verschaffen. . . . Wij hebben met veel genoeg kennis met deze verzameling van opstellen en voordrachten gemaakt, en wij twijfelen er niet aan dat het boek een warme plaats bij velen zal vinden."

CAPE TIMES.—"A man of richly stored mind and of fine scholarship, whether he draws upon the fund of personal experience or records his judgment upon questions within his own range of study, can hardly fail to produce something of substantial and enduring interest. It is true, indeed, that ripe scholars and extensive thinkers have sometimes turned out books that are 'caviare to the general' by reason of a crabbed or tedious literary style. . . . On this score, however, Judge Laurence has nothing to fear from criticism. . . . He has mingled lighter with more serious matters in his literary recreation; stories of life on circuit with essays on popular government and on the *origines* of custom and law. Biographical notices of eminent lawyers, of Sir Henry Maine and of Robert Louis Stevenson, include personal reminiscences, as well as the Gladstone papers. . . . We have said enough to commend a volume which needs no commendation of ours to ensure its circulation."

SOUTH AFRICA.—"Whether it be a treatise on the juridical systems of England and France, peasant life in France and Russia, or Aryan Society, an appreciation of the work of Sir Henry Maine, or a reminiscence of Mr. Gladstone at Cambridge, the Judge President is equally at home with his subject, and equally luminous in his expositions. . . . The addresses deal with a variety of subjects, most of these having a special interest for South African readers."

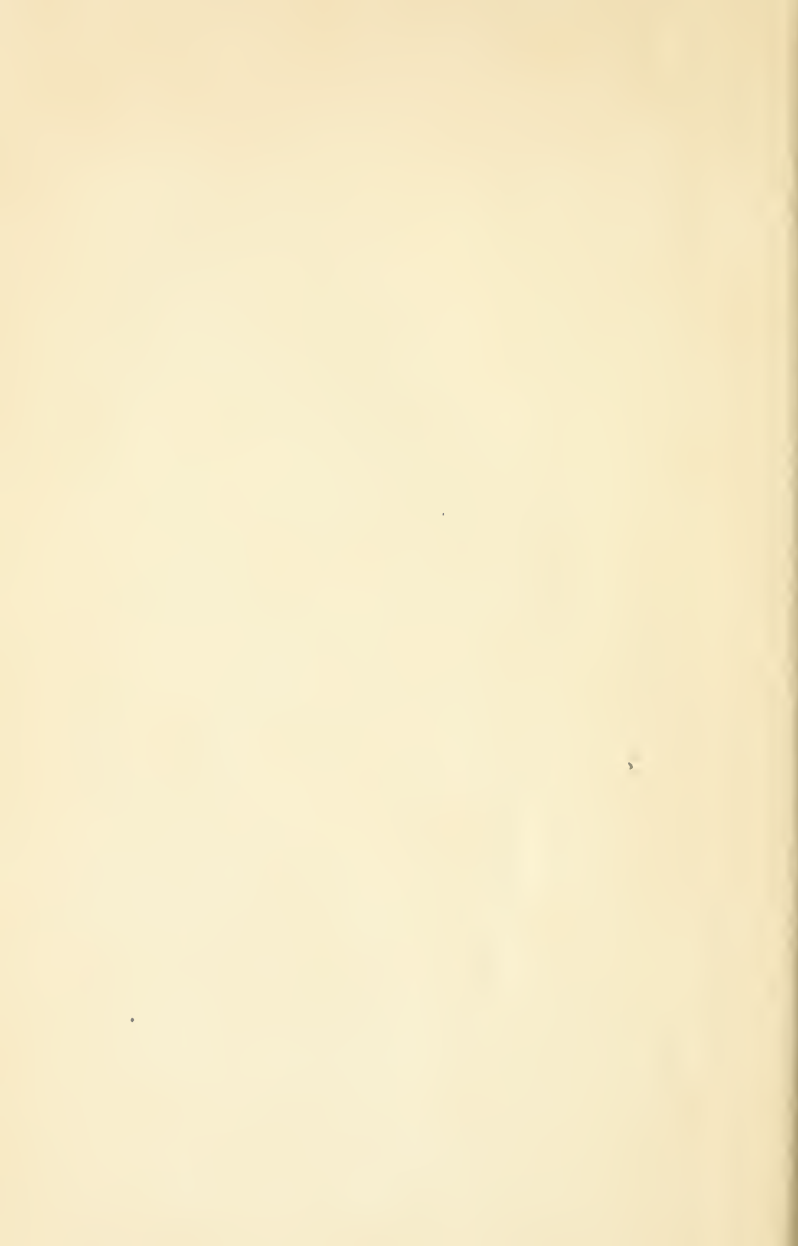
SCOTSMAN.—"This is an interesting miscellany of essays, addresses and reviews from the pen of a Colonial Judge. . . . The papers are invariably suggestive and instructive on the subjects of which they treat, and cannot but excite the interest of readers to whom these subjects make a particular appeal."

DAILY NEWS (leading article).—"The Judge President of the High Court of Griqualand has compiled a readable and entertaining volume of essays and reviews. . . . There are two or three chapters in the book which will be found particularly interesting at the present time. . . . Among the papers in this volume not specially connected with South Africa may be mentioned some interesting reminiscences of Mr. Gladstone at Cambridge, to which the great statesman paid a visit in 1878."

SATURDAY REVIEW.—"These papers and addresses are pleasantly written, and several of them bear on the present South African problem. . . . The Essay on Mr. Gladstone is noteworthy just now on account of the view taken of Mr. Gladstone's retrocession of the Transvaal."

LITERATURE.—"Do the Boers read? . . . Some further light is thrown upon the problem by a paper on Public Libraries in South Africa included in *Collectanea*, a volume of essays by Mr. Justice Laurence. . . . By way of bringing into relief the comparative reading power of Dutch and English, he describes a visit to two Public Libraries, one English and one Dutch, in a country town which is one of the headquarters of the Afrikaner Bond."

Copies of this book may be obtained from Mr. FRANCIS EDWARDS, 83, High Street, Marylebone, price 3s. 6d. net.



JRN **CIRCULATION DEPARTMENT**
 202 Main Library

2

3

5

6

ALL BOOKS MAY BE RECALLED AFTER 7 DAYS

1-month loans may be renewed by calling 642-3405
 3-month loans may be recharged by bringing books to Circulation Desk
 Renewals and recharges may be made 4 days prior to due date

DUE AS STAMPED BELOW

~~CIR. NOV - 3 '77~~

NO. DD 6, 40m 10'77 UNIVERSITY OF CALIFORNIA, BERKELEY
BERKELEY, CA 94720

